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ABSTRACT

Resulting from a National Association for Foreign Student Affairs (NAFSA) Field Service seminar, this document presents information on various aspects relating to foreign student services at U.S. universities. After an introduction, chapter 2 provides an institutional checklist for foreign scholar services. Chapter 3 presents an overview of foreign student concerns, discussing such factors as institutional responses to foreign scholars' needs and expectations, and the quality of services provided by U.S. academic institutions. Chapter 4 discusses various policy related issues regarding the provision of institutional services to foreign scholars on college campuses, including the establishment and validation of policies and the implementation and coordination of procedures by the foreign scholar office; legal considerations in the employment of exchange scholars; tax considerations and information for foreign scholars; and information management of international faculty records. Appended materials include various visa application forms and procedures for filing immigrant visa applications. (LPT)

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NAFSA FIELD SERVICE

WORKING PAPER # 1

The Foreign Scholar's Experience: A Concern for Quality

This working paper is the outcome of a Field Service sponsored seminar that took place in July 1985 at Cornell University. The Field Service receives finincia' support through a grant from the Student Support Services Division of the U.S. Information Agency.

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THE FOREIGN SCHOLAR EXPERIENCE:

A CONCERN FOR QUALITY

NAFSA WORKING PAPER

Spring 1986

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THE FOREIGN SCHOLAR'S EXPERIENCE: A CONCERN FOR QUALITY

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PROLOGUE

After thorough consideration of the case with our bishops, abbots, princes, dukes, judges, and other noblemen of our high court, we decree this benefit of our grace, that everyone who, because of his studies wanders abroad, students and professors of the most divine and holy laws, shall themselves as well as their messengers come in security to places where the studies are exercised, and live there in peace . . . who of them would not be pitied as they, for the love of sciences long exiled, deprive themselves, being already poor of riches, expose themselves to many dangers and sustain corporal injuries by often very villainous people.

Frederick I, Privilegium Scholasticum,
1158 A.D.

I. INTRODUCTION

Recently, a major research report, Absence of Decision: A Report on Policy Formation and the Lack Thereof (Institute of International Education, New York), documented dramatic growth in foreign students in the U.S., articulated a concern about the lack of adequate policy formation in many U.S. universities, and urged institutional decision-makers to formulate sound policies and practice which would enhance the presence of those students in our country.

This working paper, The Foreign Scholar's Experience: A Concern for Quality is a first step in expressing a similar concern about the professionalism necessary to deliver adequate services to a rapidly-growing population in U.S. universities: foreign scholars.

How well our universities are responding to this population is not clear. Our profession's overwhelming concern with students is admirable--it must continue--but when that concern obscures other critical concerns of the profession, some re-focusing is in order.

Over the last years, the NAFSA Field Service has gathered several of us who are practitioners in the field (Snowmass in 1984, Cornell in 1985) in order to begin some re-focusing. Our goal was to coordinate the sharing of information and ideas about this rapidly developing field of specialization. While each of us has taken specific responsibilities for certain chapters, the product is a result of collaborative writing. As such it is not exhaustive or definitive, but representative of a tenacious consensus on some general concerns.

We hope readers will join in the process of professional development initiated in the following discussions. Please critique our ideas, compare policies, share forms, forms, forms! A short questionnaire at the end of the Appendix will help to start your response. With such collaboration, we can substantially develop the professionalism which is demanded in this exciting and consequential dimension of higher education.

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II. Institutional Checklist For Foreign Scholar Services

This checklist reflects a wide range of concerns about the quality of life supporting foreign scholars at our institution. It is not meant to be an exhaustive taxonomy of mandated services, but rather a guide to point the way toward more effective use of our institutional resources in serving these important persons in our midst. It is constructed on two key assumptions:

1) The foreign scholar is generally more mature and independent than are students, but needs specific information and support for a successful academic experience, and

2) the foreign scholar is well-served by some formal recognition (receptions, introductions, networks) in order to compensate for the lack of a formal role (such as enrollment) in the university.

Please add and subtract as it may best suit your particular setting.

PRE-ARRIVAL LOGISTICS (to be communicated to the scholar)

Visa decisions/ arrangements
_____ Appropriate tax information
_____ Primary office contact person at University
Housing options (including temporary accomodation list)
_____ Cost-of-living facts
_____ Climate/clothing needs
Banking information
_____ Health Insurance information
_____ Health care options and costs
Clarifying expectations on: office space, desk, lab space, clerical support, data processing, photo copying.
_____ Airport-to-campus transportation information
Spouse/dependent expectations:
  _____ Visa limits (employment)
  _____ Language learning facilities
  Day care/schooling options
  _____ Legal, health documents (birth certificate, innoculations)
  _____ On/off campus spouse programs

ARRIVAL LOGISTICS

_____ Welcome arrangements (receptions):
  _____ Chancellor/ President/ Vice Chancellor/ Dean/ Department Chair/ Faculty Sponsor / Administrative Assistant
  _____ International Services Center
  _____ Payroll procedures
  Official records, visas
  _____ Social Security
  _____ Housing arrangements
  Community Receptions:
    _____ International organizations
    _____ Mayor/ officials "key to the City"
  Extensions of professional courtesies (library, athletic, health, faculty club priviliges)
  _____ Intrductions to colleagues

PROGRAM

_____ Connecting Scholar to contacts in field
_____ Arranging for lecture opportunities in field
Travel as culture-learning (field trips)
_____ Transportation information (driver's license, auto purchase information, public transportation)
_____ Visiting government, political associations
Community group involvement:
  _____ Visiting schools
  _____ Visiting religious groups
  Host family arrangements
  _____ Spouse/ dependent groups
  _____ Language-learning opportunities
  _____ Recreational programs, opportunities

III. An Overview Of Foreign Scholar Concerns

BACKGROUND

European universities and individual foreign scholars exercised great influence on the early development of our own institutions of higher learning. These connections fostered an academic environment which initiated and continued international contacts. Contemporary scholarship (which includes a certain amount of international research) is, by its very nature, international. In the post World War II period the United States became a major receiver and sender of scholars. We now play a vital and prominent role in international scholarly mobility and our institutions are among the most pre-eminent in the world.

During the past two decades U.S. higher education has been primarily conscious of a rapidly-increasing foreign student population. The same period has been marked by increases in the numbers of post doctoral scholars. The greatest concentrations are naturally at large research institutions, but their presence is also seen on hundreds of other campuses. Whether the numbers are few, or many, foreign scholars have not received the attention warranted by their special status and the needs faced by them and their families.

It is not possible to quantify the visiting scholar population. Unlike the annual foreign student census reported in Open Doors, we have no similar data for scholars. On many campuses the data is not kept centrally and where there are central records the data about any one individual is very scanty. In preparing for this NAFSA Seminar on Foreign Scholars an informal questionnaire was sent to twelve major institutions. Few of those institutions had kept longitudinal data for ten years but all were able to comment on trends. All reported that they had noticeably more scholars today than five and ten years ago. Nine of the twelve reported that the growth rate of foreign scholars had exceeded that of foreign students. Half the institutions reported that the numbers of post doctoral scholars had doubled in one decade and at least four reported more than tripling their scholar population. Although the data is very incomplete, it can safely be estimated that there are about a dozen institutions with 1000 or more foreign scholars and dozens more where scholars number more than one hundred. Regardless of the size of the population the scholar group must be viewed as individuals who have particular interests and needs which at times differ from those of the students. The reasons foreign scholars come to U.S. institutions are manifold. They include collaboration with a U.S. colleague on a research topic, specialized research requiring access to a U.S. laboratory, library or archives, research on a topic which is peculiarly American, the desire for research or consultation with colleagues in an international setting, and the opportunity to explore academic or other professional activities in the U.S.

One large category of foreign scholars can be classified as university staff. These scholars are employed to teach courses for which they are particularly well suited, or in some cases such as engineering, to teach courses for which sufficient American faculty are not available. The post doctoral research population, especially in the sciences, is increasingly foreign as the domestic graduate turns to other more remunerative employment options. The presence of a substantial number of foreign post-docs is a direct commentary on the American labor market. Foreign scholars who become professional staff at an institution now represent a significant part of the professional life of U.S. higher education.

Since many of our universities have trained many foreign Ph.D's, there is a desire on the part of some of these graduates to return to this country to take up or to continue collaborative research with our faculty. Others are simply eager to return to renew and update their scholarship in the country where they received their formative training. As U.S. higher education continues to expand a vast network of linkages with institutions abroad, there will surely be even greater collaboration between foreign and U.S. faculty.

Visiting scholars are not limited to certain disciplines. The natural sciences and engineering are heavily represented, but scholars can be found in all areas with the growing interest in the professions,

especially business, law and journalism. Trends indicate that visiting scholars have become and will continue to be a significant part of our university populations.

INSTITUTIONAL RESPONSES

What, then, are the expectations and needs that foreign scholars bring to U.S. institutions and how do they differ from those of foreign students? Perhaps the most important difference is related to the matter of status. Many scholars are senior in rank and experiences; they do not see themselves as students. They are generally more mature members of the professional community, faculty members, advanced researchers, post doctoral scholars or short-term visitors. The nature and duration of their appointments require unique arrangements for housing, and institutional and community networks. The list of needs which face the scholar may appear very similar to those of a student, but the institution must make a conscious effort to distinguish between those two groups and acknowledge the scholar's needs with appropriate services, sensitivity and expertise. One function that cannot be over-emphasized is that of the reception of the foreign scholar.

The reception of the scholar to the campus may vary with the nature of the funding source and the designation of responsibilities within the institution. The scholar who is employed by a U.S. institution is integrated into a set of formal personnel procedures. The foreign scholar has particular interaction with the responsible U.S. faculty member and department. However, the scholar who does not have a university appointment will more often be processed by a completely different set of procedures. The connection to the institutions can be even more tenuous if the university does not issue visa documents.

CONCERN FOR QUALITY OF SERVICES

There are many instances where the academic exchange experience of the visiting scholar suffers from a limited peer association. In other situations there is a full-flown collegial relationship with broad integration into the department, into the university and the surrounding community. The experiences are sufficiently varied that the matter of quality of services to foreign scholars is of concern to NAFSA. Since scholars are not enrolled in an academic or degree cycle at the institution, they frequently experience marginality as neither student nor faculty. Because many perform research functions as opposed to receiving special academic appointments, responsibility to assist the scholar to integrate into the academic community, is often not delegated within departments. Where there have been cutbacks in staffing and services for foreign students there has been little or no attention to foreign scholars, and the climate has not been conducive to press for additional support.

Why, since these scholars are regarded as mature and experienced, does it matter to be concerned about the quality of our sevices to them? Simply put, many are experiencing life at a U.S. institution for the first time, and for others after an absence of many years, conditions, rules and regulations have changed. These scholars have made significant investments of their professional careers, and frequently their own resources, to join American higher education and to enter into the vast network of international scholarly mobility. Intrinsically, they merit our attention. As well, when US institutions seek to strengthen the international dimension of their curricula, and to foster international scholarly research, foreign scholars become an integral part of those worthy enterprises. This collaboration in academic communities may in turn demonstrate to other institutions in our societies the practical possibilities and rewards of peaceful international cooperation.

IV. INSTITUTIONAL SERVICES

A. POLICIES AND PROCEDURES

There are a few universities in the United States with an office set up solely to provide services to foreign scholars. There are, however, many more colleges and universities that are suddenly faced with growing numbers of foreign faculty members, visiting scientists and postdoctoral fellows. Many have no clear idea how they should set up an office to provide for their needs, what those needs are, and what expertise is needed to respond to them. The institutions which have not had many foreign employees or appointees before are struggling to respond to the challenges, issues and problems that result from the arrival of non-US citizen employees on their campus.

It became apparent in the discussions that took place while preparing this working paper that there is no single model for a university office providing foreign scholar services. While the lack of an office prototype is not critical, what is of primary concern is that there be a centralized responsibility delegated to competent and sensitive personnel for the services. Appropriate university authorities need to be involved in designing, structuring and supporting the office. These authorities in turn should make the entire campus aware of its centrality in order to avoid serious state and federal liabilities, and to enhance the quality of services for these scholars. The immigration aspects of the advising of foreign scholars are much more complex than those of foreign students, and often with more critical personal and institutional consequences. The university should decide how it will respond to the need to be involved in obtaining appropriate visa status for its foreign employees, and affiliates. It should also consider the role it will play in orienting the scholar to the university systems and culture.

Once is has been decided that the university will move to create an office to serve foreign scholars, or will designate an administrator as a foreign scholar adviser with responsibility in this area, the office or individual should be given clear, centralized authority to deal with the issues that evolve regarding foreign researchers and faculty. The office should be identified by the university administration as having primary responsibility for liaison with the Immigration and Naturalization Service (INS), the Labor Department, Department of State, and the US Information Agency (USIA). The foreign scholar adviser should act as the university's agent in filing immigration and related applications and should be the official university spokesperson in matters relating to foreign scholars.

We cannot overemphasize the importance of the relationship of the foreign scholars office and the government agencies that control the admission, extension, and change of status of non-US citizens. A thorough knowledge of immigration requirements is essential to win the cooperation and respect of these agencies, and to be successful with the applications filed. Several skills should be developed - the ability to understand and interpret immigration requirements so that they can be used to the benefit of the university and its foreign employees, an understanding of the problems faced by these government agencies, --the offices are often short staffed and overwhelmed with applications and inquiries--and the ability to discriminate between major and minor problems. As well, there is a need to make professional judgements which balance the immediate press for departmental staffing in relation to the concern for the integrity and long-term reputation of the university.

The university should not expect that it can work things out by having favors done - rather the regulations and requirements should be learned and applied. An institution's credibility and reputation with INS, State, Labor and USIA are extremely important to its success in working out problems. The university will be most successful with its application if it complies with the requirements and provides the highest quality material it can.

While it is necessary for the university with a sizable foreign staff population to develop immigration expertise, it must be observed that there are some situations for which there are no easy answers and with which experienced administrators and immigration attorneys in the field are continually struggling. Nevertheless, having a foreign scholar office which is effective in dealing with government agencies relieves the departments and the foreign scholars of the burden of trying to deal with agencies and

requirements they do not understand. It allows foreign nationals to spend time in appropriate academic activity, and puts in competent hands the details involved with their status. Foreign scholar offices around the country report to a variety of campus offices - the dean of students, provost, general counsel, personnel, or an academic or administrative vice president. Some are freestanding, others part of an international office serving foreign students as well as foreign scholars. It is less important where the office reports than that it report to someone supportive of the aims and issues involved. The office will work closely with deans, department heads, faculty members, department administrative officers, administrative-assistants, secretaries and the personnel office to promote the overall academic, professional and cultural experience of the international community on campus.

The office needs to become an automatic and authoritative part of the appointment process so that it is informed about each foreign national appointed on campus and is able to provide advice and assistance. The foreign scholar adviser should be the person with primary expertise in questions regarding the employability of foreign nationals. The authority of the foreign scholar office should include administration of the Exchange Visitor program for research scholars and faculty and identification as the agent of the university in non-immigrant and immigrant applications. Notification to the government agencies involved regarding the institution's policy on handling these matters will help prevent unauthorized use of the university's name by others.

ESTABLISHING POLICIES

The foreign nationals being served by a foreign scholar office are primarily its academic and research staff. They come to the university to teach, conduct research, lecture and consult. Due to the specialized nature of the foreign scholar adviser's expertise in the immigration area, there are often requests for information or help in immigration matters from non-academic employees including administrators and support staff.

The visas normally used to permit a foreign scholar to be employed are the non-immigrant J-1, H-1, practical training categories (F-1 and J-1), and the permanent resident visas that are based on employment at the university. The following considerations should underlie the policies that the university establishes in visa matters:

* An effort to balance the interests of the university and those of the foreign scholar. Often these interests are identical but sometimes the balance shifts one way or the other and the foreign scholar adviser must judge what is in the best interests of both.

* The level of expertise currently available on campus or which can be developed. If no one on campus is knowledgeable about visa matters beyond a certain point and no one is willing or able to become more familiar, the university should consider a policy of limiting its support to the visa categories with which it is familiar.

* The university's credibility and reputation with government agencies and in the community .

GETTING POLICIES VALIDATED AND MAKING THEM WORK

The office must win support within the university for policies and guidelines it would implement. The issues involved should first be discussed with the person to whom the foreign scholar adviser reports, then with the appropriate deans, provosts, vice presidents or chancellors --formally through university committees or councils and informally. Department heads and chairmen and directors of laboratories should have an opportunity to provide their input as well. Prior discussion and agreement regarding policies is an important part of the validation process but it should also be recognized that policies undergo additional

important part of the validation process but it should also be recognized that policies undergo additional evaluation once they are put into practice. The success rate of the application filed, campus perceptions of consistency and fairness and the good will and good judgment of the foreign scholar adviser will all color and sometimes alter the policies that have been put into effect.

Beyond the discussion stage, it is essential to promulgate a policy directive to the affected audience so they know what the rules are. As cases come along, reference should be made to the discussion that went on at the time the policy evolved. This is often necessary to be persuasive that the policy is still fair and justified. At times, it may be necessary to have supplementary campus-wide memos or directives if earlier documents have not completely clarified the situation. Such a memo could come from a vice president, provost or chancellor in order to lend support to the foreign scholar office.

IMPLEMENTATION, COORDINATION AND FOLLOW-THROUGH

The foreign scholar office should be adequately staffed at the professional and secretarial levels to be able to respond to the demands of expertise and administration that the field requires. Budget support should cover the usual office needs as well as some special needs - subscriptions to specialized, immigration-related publications, legal reference materials, and attendance at workshops and conferences for the professional handling immigration applications run by NAFSA, or organizations such as the Practicing Law Institute and the American Council for International Personnel. Keeping up-to-date in a field which sees many changes in legislation, regulations, interpretation and personnel is vital. Some foreign scholar advisers have studied immigration law at their own or a neighboring law school. Funding should be made available to acquire computer systems since universities and outside agencies will want to know more about the foreign scholars on campus. At the moment there is no easy way to obtain this information but a centralized office would be able to provide it and will want to do so.

It is important to establish procedures that will assist the departments and laboratories to take advantage of the services provided. Clear instructions to issue visa documents, such as the IAP-66 form for a J-1 visa, or to file visa applications, such as change of status, H-1 and permanent residence applications should be set up and communicated to the departments involved. Immigration matters tend to be very confusing to those not frequently involved with them and need to be de-mystified. It will be much easier if the process by which departments request forms or prepare applications has been simplified and each step explained. Workshops should be held so that department personnel understand what information is needed, why it is important and how far in advance it should be obtained. Memos providing the same information should be prepared for new personnel. The foreign scholar office should take advantage of other campus publications regarding administrative policies and procedures to add information about visa procedures. Redundancy of information in the system can only help if there are a rapidly growing number of foreign scholars on campus.

Once procedures are decided, there are choices to make about the type of visa the scholar should obtain. Most foreign scholars and their faculty hosts are unaware of the distinctions among the visa possibilities. Rumors and misinformation abound in this area. It is important to point out errors and to provide factual information and advice to those faced with these choices. Some of the factors that should be considered in discussions regarding the most appropriate visa include timing, previous visa history, professional standing, spouse employment, and the length of the appointment.

The foreign scholar office should prepare and disseminate statistical information regarding its constituency to keep others aware of the changes and growth in its clientele, the countries they come from, positions they fill and the departments that appoint them. The office will also find that it may be useful to share information regarding foreign scholars on campus with other departments which may be interested in having a foreign scholar lecture or participate in some of its activities.

The foreign scholar adviser may also act as a mediator regarding the expectations of the scholar and the host. The adviser may help to sensitize the community regarding the concerns of the foreign person working in a new and different environment by sponsoring workshops which promote cross-cultural sensitivity. On a one-to-one basis the foreign scholar adviser may be able to help faculty members extend invitations which are frank about how much or how little time the host will be able to spend with the

visitor, or the kind of access to facilities and privileges such as office space, computers and copying, secretarial help, libraries, auditing classes and recreational facilities.

The foreign scholar office should become an integral and valued part of the university system. It should work closely with the personnel and payroll offices, department and research laboratories, housing and medical services, providing accurate information to all those concerned, identifying problem areas and possible solutions and, in general, being an advocate for the issues relating to the life of foreign scholars on campus.

CHECKLIST

INSTITUTIONAL SERVICES

POLICIES AND PROCEDURES
- create an office to work with foreign scholars or designate someone responsible for them
- provide clear, centralized authority
- recognize as primary liaison with government agencies involved
- develop immigration expertise
- establish good relations with those agencies

REPORTING
- may be to one of a wide variety of administrative, academic or counseling offices
- be concerned about expertise and sensitivity to issues
- work with all departments within the university

ESTABLISHING POLICIES
- balance university's interests with those of the scholar
- base services on the level of available expertise
- be concerned about the university's reputation and credibility

VALIDATING POLICIES / MAKING THEM WORK
- encourage discussion and agreement within many levels of the institution
- disseminate policy directives to affected audience, reiterate it at times

IMPLEMENTATION, CO-ORDINATION AND FOLLOW THROUGH
- provide adequate staffing and budget (including special needs)
- stay up-to-date
- clarify requirements and procedures via forms and workshops
- describe visa choices and the factors to consider
- disseminate statistics
- mediate expectations
- work closely with other university offices

IV. Institutional Services

B. Legal Considerations In The Employment of Exchange Scholars

The restrictions and conditions imposed by law on exchange scholars and their institutional sponsors must be understood if the institution is to make wise decisions about the use of the J-1 visa. Because the laws are complex and the regulations change frequently, this discussion should not be relied upon in making decisions. Rather, this discussion focuses on a number of areas of concern which you may want to explore further by talking with knowlegeable people and by consulting up-to-date references. A bibliography of recommended reference is presented in Appendix A.

Choosing The Appropriate Temporary Visa

A J-1 visa is available to a foreign national coming to the U.S. to participate in an exchange program approved by the U.S. Information Agency (USIA). The foreign national may come as a student, scholar, teacher, professor, research assistant, trainee or specialist or leader in a field of specialized knowledge or skill. The foreign national must be coming to the U.S. temporarily. To qualify for the visa, proof must be provided that there is an intent to return to the foreign national's country of residence.

An H-1 visa is available to a person of "distinguished merit and ability" coming to the U.S. temporarily to do a job requiring that ability. The "distinguished merit and ability" standard is met by a person with a recognized university degree who is coming to teach or do research in his field. Again, issuance of the visa requires proof that the foreign national intends to return home when the temporary job is finished.

Frequently, the institution has the option to use either a J-1 visa or an H-1 visa to bring a foreign national to campus for a temporary appointment. [1] For the most part, the decision will be based on these practical considerations:

How quickly is the person needed?

How long is the proposed stay?

Is there a chance that the institution may want to keep the foreign national permanently?

If the person is already in the U.S., what kind of visa does he have and what are the limitations, if any, on a change of visa classification?

Does the person's spouse need work authorization?

What are the tax ramifications of each type of visa on the individual's personal income tax situation?[2]

Institutions which sponsor many visas may want to consider formulating policies on some of these issues. For example, the institution may decide never to use the J-1 visa for those coming to fill positions in departments where there is a known shortage of qualified people. This will avoid potential problems with the return residence requirement if the institution decides later to make a permanent offer of

1 In a few cases, an F-1 visa issued for post-doctoral research may also be appropriate..

2 For a discussion of basic taxation issues see Chapter IV. C.

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employment. In most institutions, however, the numbers of foreign faculty and scholars do not justify broad policies, and decisions will be made on a case-by-case basis.

HOW QUICKLY IS THE PERSON NEEDED?
OBTAINING THE VISA

In many cases, the J-1 visa is faster to obtain than the H-1 visa since the J-1 is handled internally while the H-1 requires approval of the INS. To begin the process, the institution issues a Form IAP-66 to the foreign national. If abroad, the foreign national presents this document, along with evidence of an intention to return to a home country residence, to the appropriate Consulate, which may then issue the visa.

If the foreign national is in the U.S. and is maintaining current status, the INS is petitioned for a change of nonimmigrant status. The filing is made using a Form I-506, accompanied by a Form IAP-66. The foreign national must wait to begin work until the change is approved.

The institution initiates the H-1 visa by filing a sponsoring petition, Form I-129B, with the appropriate INS office. Processing times can vary around the country from three weeks to three months.

If the foreign national is abroad, the institution may request that the INS cable the Notice of Approval of the visa petition to the appropriate Consulate. The foreign national then applies at the Consulate for the issuance of the visa.

If in the U.S., the foreign national may, if in status, apply simultaneously with the filing of the H-1 petition for a change of visa classification. Again, the foreign national cannot begin work until the petition and application are approved.

The law contains a presumption that every foreign national coming to the U.S. is an intending immigrant. An immigrant is a person coming here to reside permanently. Both the J-1 and H-1 visas are nonimmigrant or temporary visas which require a showing that the foreign national does not plan to stay permanently in the U.S. The job of proving an intent to return to a home country rests with the foreign national.

U.S. Consuls located in some countries require more proof on this issue than these offices in other countries. Sometimes, denials of visas occur which were not anticipated by the institution and which seem unwarranted. The decision of Consular officials are unreviewable by appeal or court challenge. You may be able to obtain some assistance getting information and, in certain cases, getting the visa, by contacting the Visa Office (Public Inquiries) of the State Department. A knowledgeable attorney can also be of assistance.

HOW LONG WILL THE PERSON STAY?
LIMITATION OF STAY

Currently, the stay of a J-1 faculty member in the United States is limited to three years. As a result of a recent regulatory change, if the Form IAP-66 is so endorsed, an exchange visitor may be admitted to the U.S. for the entire three years.

The INS has a policy which will become a rule which would extend the petition validity and initial admission of an H-1 visa holder to three years with a single extension not to exceed two years. A final extension, not to exceed one year, could be granted if the case, after certification to the INS Commissioner, were found to have extraordinary circumstances.

IS THERE A CHANCE THAT THE INSTITUTION WILL WANT THE FOREIGN NATIONAL PERMANENTLY? THE RETURN RESIDENCE REQUIREMENT

In many cases the expediency of the J-1 visa is outweighed by the return residence obligation which may attach to that visa. An exchange visitor whose program was financed in whole or part, directly or indirectly, by the United States or the home country government; or who is in an occupation designated as a shortage occupation on the skills list[3] or who came to the United States to receive graduate medical education is subject to a mandatory requirement to return to the country of nationality or last residence and reside and be physically present there for an aggregate of at least two years. Until this requirement is fulfilled, the exchange visitor cannot apply for an immigrant visa or for a change of classification to an H-1 or other nonimmigrant visa. The return residence obligation also applies to members of the exchange scholar's family who have J-2 visas. The return residence obligation is contained in Section 212(e) of the Immigration and Nationality Act. (For waivers of the two year requirement, please refer to Appendix)

DOES THE SPOUSE NEED WORK AUTHORIZATION?

Permission to work is unavailable to the dependents of an H-1 visa holder. If a spouse wants to work, he must qualify independently for one of the work authorized visa categories.

The spouse of a J-1 visa holder, however, may receive permission to be employed. To be eligible, the spouse must prove that the employment is necessary for the support of dependents and not for the support of the exchange scholar. To apply for work authorization, the spouse sends a letter requesting permission to work to the appropriate INS office, indicating a need to work in order to cover the spouse's own expenses (or those of dependent children).

If work permission is granted, the INS will endorse that fact on the spouse's Form I-94. This work permission is without restrictions and the spouse may work in any number of jobs, full or part-time.

THE PERMANENT RESIDENT VISA

Change in or recognition of institutional needs may cause the institution to reconsider its temporary relationship with an exchange scholar. Certain preliminary steps must be taken if a department wants to make a permanent offer of employment to the exchange scholar. The institution, also, must be prepared to undertake certain sponsorship obligations.

WHAT IS A PERMANENT RESIDENT?

Immigrants, commonly called permanent residents or green card holders, are admitted to the United States indefinitely. A foreign national who receives an immigrant visa based on employment may, after a period of "good faith," change employers or even careers. A permanent resident for all practical purposes has the same lifetime job opportunities as a United States citizen.

Every immigrant visa is based upon sponsorship. Each type of sponsorship is called a "preference." The law provides that 270,000 foreign nationals may be admitted for permanent residence each

[3] The USIA published an updated skills list which became effective on July 12, 1984. Any alien who obtained a J-1 visa or became a participant in an exchange visitor program involving a designated field of specialized knowledge on the revised skills list is subject to the return residence requirement.

year under the preference system.[4] The 270,000 visas are allocated to the preference on a fixed percentage basis. The preference categories and percentage of visas assigned to each category are as follows:

First Preference	unmarried sons and daughters of United States citizens - 20%
Second Preference:	spouses and unmarried sons and daughters of permanent residents - 26% plus unused visas from the first preference group
Third Preference:	professionals, scientists and certain artists - 10%
Fourth Preference:	married sons and daughters of United States citizens - 10% plus unused visas from the first, second and third preference groups
Fifth Preference:	brothers and sisters of United States citizens - 24% plus unused visas from first, second, third and fourth preference groups
Sixth Preference:	those coming to perform skilled and unskilled labor - 10%

For the most part, jobs for university faculty or researchers qualify for third preference sponsorship.

THE LABOR CERTIFICATION PROCESS

With only a few exceptions, every immigrant visa petition based upon a permanent job offer in the United States must be supported by an approved Application for Alien Employment Certification, commonly called a labor certification. A labor certification is a formal finding by the Department of Labor, Employment and Training Administration (DOL) that: (i) there are not sufficient United States workers who are able, willing, qualified and available for the job, and (ii) the terms of the employment will not adversely affect the wages and working conditions of United States workers similarly employed. DOL has issued very detailed regulations published at 20 CFR Part 656 which, along with the operations instruction in DOL's Technical Assistance Guide (TAG) and, to a certain extent, local custom, govern the labor certification process.

PRECERTIFIED OCCUPATIONS

DOL has determined that employment of persons in certain occupations will not adversely impact the job market. An employer may make a permanent offer of employment to a foreign national included in one of the precertified groups without first obtaining a labor certification. These groups are listed in Schedule A of the DOL regulations, 20 § 656.10.

[4] As a practical matter, many more foreign nationals are admitted each year since refugees and spouses and parents of United States citizens immigrate without regard to the preference system.

In the case of Schedule A occupations, Form ETA 750, Application for Alien Employment Certification, is submitted in duplicate directly to the INS as an attachment to the preference petition, Form I-140. The INS will determine whether the foreign national is eligible for precertification. If so, and if all other requirements are met, the preference petition will be approved. The priority date for the issuance of the immigrant visa is the date on which the preference petition is filed with the INS.

There are four groups of Schedule A precertified occupations. Eligibility criteria are outlined in 20 CFR 656.22 and the Department of Labor's Technical Assistance Guide (TAG). (See Appendix) The group which universities use is the Schedule A Group II: Persons of exceptional ability in the sciences or arts. Approval of these applications is difficult because eligibility is based on documentation presented by recognized experts testifying to the international acclaim of the foreign national.

SPECIAL HANDLING OF LABOR CERTIFICATIONS FOR COLLEGE AND UNIVERSITY TEACHERS

There are two ways that universities may apply for individual labor certification. Those who hold college and university teaching positions receive more favorable treatment in the process than other University staff, including researchers. Approval of a conventional labor certification is based on a showing that no U.S. citizen or permanent resident job applicant was minimally qualified for the job and that the prevailing wage is being or will be paid. In the case of positions for college and university teachers, the institution may reject an otherwise qualified applicant if the foreign national is more qualified than the applicant. This special handling, which is described at 20 CFR 656.21a is inapplicable to researchers and all other non-teaching staff.

Universities which fill teaching positions through competitive recruitment must file an application for labor certification within 18 months after the selection is made to qualify for the special handling provisions. The position must have been advertised at least once in a national journal. The ad must contain the job title, duties and minimum requirements. The wage need not be stated.

Duplicate original labor certification applications (Form ETA 750) must be filed with the local office of the state employment service. The material accompanying these applications must describe in detail the recruiting process and include a statement of the total number of applicants; the job-related reason why the foreign national is more qualified than each applicant; the final report of the school recommending that the foreign national be hired; a copy of at least one national advertisement for the position; evidence of all other recruitment sources used; and a statement giving the foreign national's background. This material must be signed by the official who has the actual hiring authority for the position.

As soon as the labor certification application is filed, the local office will conduct a wage survey. If the wage is within 5 percent of the prevailing wage for similar positions and the application is otherwise complete, it will be forwarded to the state office for transmission to the Department of Labor regional certifying officer for a determination.

CONVENTIONAL LABOR CERTIFICATION PROCESSING

If precertification or special handling are not available, the institution must apply for and receive a labor certification before making a firm offer of permanent employment to a foreign national. [Editor's note: Our seminar brought considerable discussion of the notion of the "firm offer." There was no consensus. Telephone some of us and join the dialogue!]

The first step is to analyze the foreign national's background and credentials. If the foreign national has a four-year B.A. or B.S. degree from an American school, no further evaluation is necessary. If the foreign national has a degree or certificate from a foreign institution, those credentials must be evaluated by a credentials evaluator recognized by the Immigration Service.

The labor certification should be prepared only after the credentials question is answered. This is essential since the way in which the labor certification is prepared may well determine whether the position

and the employee will qualify for sponsorship under the third or sixth preference. It is imperative that the foreign national have the minimum requirements as listed in response to Items 14-15 on the labor certification application on the date the labor certification is filed. If he does not, the labor certification may be issued, but it will not be sufficient to support the petition filed with the Immigration Service to sponsor immigration for the foreign national. This is not true for preference petitions supported by a labor certification obtained under the special handling procedure discussed above.

If your institution has already done a job search conforming to DOL standards and properly documented, it may be possible to obtain a waiver of additional search requirements. (This practice varies in region D.O.L. offices) No further action is required after filing the labor certification application. If the search was done in an untimely manner (more than six months prior to filing the L.C. for researchers; more than eighteen months after the completion of the job search for faculty) it will be necessary to continue the search after filing the application in the following manner.

The labor certification forms in duplicate original must be filed with the local office of the state employment service. The local office will review the forms to be certain that the minimum requirements are within DOL guidelines and that the wage is at least the prevailing wage for similar positions in the community. Once that determination has been made, you are notified and the formal DOL recruiting process begins.

At that time, you must post an internal notice offering the position to university employees or any other qualified U.S. citizen or permanent resident workers. The notice must state the job title, duties, minimum requirements and salary and be posted for at least ten business days in a conspicuous place where qualified applicants for the position would be likely to see it. The dates when it is posted and taken down must be endorsed at the bottom and the notice initialed by you.

In addition, you must run a single advertisement offering the position in a national publication. The advertisement cannot name the school. Instead, it must refer applicants to the local employment office. That office will send the resumes it receives to you. If an applicant's resume does not show that the candidate possesses each of the minimum requirements necessary to successfully perform the job (as listed at Items 14-15 on the labor certification), that person may be disqualified. An applicant may also be rejected for any other bona fide reason such as poor attendance in another job, alcoholism or drug dependence and so forth. In some cases, an interview on the telephone or in person may be necessary.

The local employment office will send a notice of the job opportunity through its interstate computer network. Also, the local office will make the job known to any interest person in the community who appears qualified. Resumes received as a result of these efforts will be referred to you in the same manner as discussed above.

If there is a qualified U.S. citizen or permanent resident worker available for the job, that person is the only one DOL will allow your institution to hire. While that institution does not have to hire that person, if that person were rejected the labor certification for the foreign national would be denied.

If no qualified U.S. citizen or permanent resident workers apply, you can continue processing the labor certification. You must submit a wrap-up letter 30 days after the advertisement appears. That letter summarizes recruitment efforts since the filing of the labor certification. Each job applicant must be listed and the reasons why he was not qualified specified. The resumes for each job applicant must be attached to the letter. The original of the internal posting, as well as copies of the advertisement, also must be included.

The application and recruitment results are sent to the state office of employment services for review. If it appears that all the required steps have been taken, the labor certification will be sent to the regional office of DOL having jurisdiction over the state in which the job is offered.

As a general rule, it takes between three to eight months from the time the wrap-up letter is sent to the local office until there is an initial determination on the case made by the regional office. The regional certifying officer has two options. He may either issue the labor certification or issue a notice of findings.

A notice of findings will state deficiencies with your recruiting effort. You have 35 days in which to cure the deficiencies. If you must readvertise, DOL will usually grant an extension of time in which to respond to the notice of findings. A request for an extension of time must be in writing, must state reasons why it is needed, and received by the DOL regional office before the due date for rebuttal material given the notice.

If you satisfy the certifying officers objections with the rebuttal materials, the certification will issue. If not, the certification will be denied. You may then appeal the case to an Administrative Law Judge (ALJ). It takes at least a year before an ALJ will rule on your case. For this reason, it is prudent to try to satisfy the certifying officer's concerns so that a certification will be issued.

[Editor's note: If the exchange visitor is subject to the two-year return residence requirement, please refer to that discussion in the appendix]

SPONSORSHIP: THE PREFERENCE PETITION

The institution sponsors a permanent visa for a foreign national by filing a Form I-140, Petition to Classify Preference Status of Alien on Basis of Profession or Occupation, with the INS office having jurisdiction over the place [5]of intended employment. The petition asks the INS to find the foreign national entitled to either a third or sixth preference visa.

The filing requirements, which are the same for both the third and sixth preference categories, are as follow:

(i) Form I-140, Petition to Classify Status of Alien on Basis of Profession or Occupation;

(ii) An approved labor certification or proof of eligibility for precertification;

(iii) A letter from the institution stating that the job offer is permanent and if the labor certification was issued under the special handling provisions, so stating;

(iv) Any supporting documents which prove that the foreign national met the minimum requirements for the job on the day the application for labor certification or request for precertification was filed if necessary; and

(v) Filing fee - $50.00.

If the foreign national is already in the United States, the permanent residency application and accompanying documents may be filed simultaneously with the Form I-140, provided that (i) he has not worked without permission; (ii) he is not subject to the return residence requirement; and (iii) a visa is immediately available to him.[5] The permanent residency application includes the following:

(i) Form I-485, Application for Status as Permanent Resident;

(ii) Form G-325A, Biographic Information;

(iii) Affidavit of Support for each dependent;

(iv) Fingerprint record;

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[5] See the discussion of Visa Availability

(v) Two photographs of the applicant;

(vi) Birth certificate;

(vii) Marriage certificate;

(viii) Divorce or death certificates (if appropriate);

(ix) Passport;

(x) Form I-94; and

(xi) Filing fee - $50.00 (per person).

Each family member applying for permanent residence must file the same documents as listed above and must have the results of a medical examination done by a doctor certified by the INS. The medical examination includes a chest X-ray, serology test for applicants over 14 years old and a general statement of good health. Each also needs photographs and if 14 years or older, fingerprints.

VISA AVAILABILITY AND PRIORITY DATES

The permanent residence application can be filed only when a visa is immediately available. All applicants, whether filing for the visa at a United States Consulate or with the INS, are subject to the same rule of availability.

The immediate availability of an immigrant visa is determined by comparing the foreign national's priority date with the date shown for his preference category on the monthly schedule published by the Visa Office of the Department of State. A sample of this bulletin is reproduced at Appendix B.

In the case of a third or sixth preference applicant, the priority date is the date a labor certification was accepted for processing by the local employment service office. In the case of a Schedule A applicant, the priority date is the date on which the Schedule A application was filed with the INS.

If visas become unavailable before processing of a permanent resident application is completed, the application will be held in abeyance until a visa can be allocated.

APPLYING FOR A PERMANENT RESIDENT VISA AT A UNITED STATES CONSULATE

If the prospective employee is overseas or if he has worked without permission in the United States, the permanent residence application must be filed with a United States Consulate abroad. The Consulate will not accept an application for permanent residence until it receives notice of approval of a preference petition. Once the Consul receives such notification, an immigration visa application (called a "Packet 3") will be sent to the foreign national. The foreign national should then do the following:

(i) Complete and return the Biographic Data Form DSP-70;

(ii) Sign and return the appropriate form which indicates that he has in his possession all of the following documents for himself and each dependent:

(a) Birth certificate;

(b) Marriage certificate;
(c) Divorce or death certificate (when appropriate);
(d) Color photographs;
(e) Passport;
(f) Military records;
(g) Police record or clearance certificate (if applicable); and
(h) Current offer of employment.

When the application and document form are received, the Consul will complete processing and request a visa from the State Department. When the visa is received and the security checks completed, the applicant is scheduled for an interview. Each applicant must have a medical examination done by a physician approved by the Consul. Generally, the examination is done the day before the interview.

The foreign national and his dependents must appear in person for the interview with the original of each of the documents listed above. If the visa is approved, the Consul will issue documents with which the foreign national can enter the United States immediately as a permanent resident.

IV. INSTITUTIONAL SERVICES

C. TAX CONSIDERATIONS

This section is included with some reluctance since United States tax law is extremely complex and subject to change and reinterpretation, in some cases with little advance warning. International education administrators should not be expected to provide tax advice and assistance to foreign scholars. To attempt to provide services beyond those required of employers puts the institution and the individual at some risk.

INSTITUTIONAL RESPONSIBILITY

The employing institution has the following three areas of responsibility. First, it must withhold taxes as prescribed by law. Second, the employer must permit and assist employees to claim any exemptions from withholding or any other tax benefits to which they can reasonably show that they are entitled. These include treaty exemptions, scholarship and fellowship exemptions and similar benefits. Third, the employer should aid the employees in claiming appropriate refunds by providing a W-2 form listing wages paid and taxes withheld at the end of the year or on termination of employment.

INDIVIDUAL RESPONSIBILITY

The individual foreign scholars, those most directly involved and those who will benefit or suffer from tax decisions, must take the major responsibility for determining tax liability.

What follows, then , is some general information about U.S. tax structure which can be excerpted and given to foreign scholars. This information may assist scholars in assessing their own tax liability since each person's liability is unique and thus should be analyzed individually. Suggestions of appropriate kinds of tax information and assistance for the foreign scholar advisor also are included under the sections "Pre-arrival Information", "Assistance Upon Arrival," and "Tax Season Assistance."

A. PRE-ARRIVAL ASSISTANCE

Individuals who are considering a move to the United States, either temporary or permanent, may want to analyze their individual financial situation and take appropriate action so as to minimize their tax burden. It should be noted that in reviewing their financial situation, they may be concerned with the tax impact on their personal investments in addition to the tax burden on their university salaries. Tax planning is especially important because individuals have a surprising degree of flexibility in arranging tax affairs, but the timing of the tax planning is of utmost importance. Beginning with the 1985 tax year, residency status for tax purposes is generally determined from the day of arrival in the United States. Thus, it may be a good idea to stress to prospective faculty the importance of beginning the tax planning prior to leaving their home countries.

Foreign scholars and faculty who have conducted such a tax evaluation prior to arrival will be prepared to complete the W-4 card and Declaration of Tax Liability upon arrival without further explanation and delay.

Attachment A is a prototype of pre-arrival tax information that may be useful for the foreign scholar's tax planning purposes. Institutions may want to send such a handout to prospective foreign faculty/staff members.

For those advisors who regularly meet with prospective foreign faculty/staff when they are on campus for interviews, information regarding the various forms of taxation in the U.S. and the general significance of resident alien versus nonresident alien status for tax purposes should be given to the individual at that time. It will also be useful to provide the sponsoring academic departments with general information regarding the tax liability of their scholars and faculty members. Such considerations will sometimes be a factor in determining the choice of visa type (H-1 or J-1) as well as arrival date in the United States, since residency is generally determined from the date of arrival.

B. ASSISTANCE UPON ARRIVAL

ORIENTATION

Written orientation and welcome information for new scholars should contain: a brief explanation of U.S. taxation, filing statuses, certificates of compliance (also called Sailing Permits) ; information concerning possible sources of assistance in preparing tax returns; and directions on how to obtain tax treaty information.

Orientation sessions which discuss financial matters, employment regulations and procedures should include a brief explanation of the various kinds of taxes in the United States, sailing permits, and other appropriate tax information.

ASSISTANCE IN COMPLETING W-4 CARD

Appropriate information to assist foreign scholars in completing their W-4 cards (Declaration of Withholding Allowance) and in determining their residency status for tax purposes should be provided on arrival. The employer should accept the W-4 card as filed with the following exceptions:

1. Non-residents for tax purposes who are not residents of Canada, Japan or Mexico may claim only one withholding exemption.

2. The "exempt" category on the W-4 card only applies to those persons whose yearly income is less than the minimum income standard established each year by the federal government. This exempt category may not be used as the vehicle for claiming tax status by treaty.

Note: Since non-resident aliens may only claim one exemption, a higher amount of money may need to be withheld to cover their tax liability.

TAX EVALUATION FOR PAYROLL

The tax evaluation determination for Payroll Withholding Allowance should be completed upon arrival. It is recommended that the individual sign off on a "Declaration of Tax Liability" form and the IRS 1078 should be placed on file for individuals claiming resident status for tax purposes. Some mechanism must be designed for notifying the payroll office when an individual's tax status changes. Attachment B is a suggested prototype for a "Declaration of Tax Liability" form.

C. TAX SEASON ASSISTANCE (JANUARY - APRIL15)

In most cases, universities will not be prepared to provide tax information and assistance to employees. The following kinds of assistance will be greatly appreciated by foreign scholars so long as they understand that completing and filing tax returns is the individual employee's responsibility.

Since tax forms most frequently used by visiting scholars and new foreign faculty are sometimes difficult to locate, it would be useful to order multiple copies of appropriate IRS forms and publications in December or early January, as soon as they become available. A list of useful publications is found in Attachment C. The district IRS Tax Payer Education Coordinator can arrange to order IRS publications in bulk.

Many foreign student/scholar offices conduct tax seminars or workshops utilizing the expertise of payroll and personnel officers and local tax professionals. Sessions to assist in completing returns might be arranged with IRS assistance or through a graduate accounting department.

Other standard sources of information include: the local Internal Revenue Service and district IRS office, whose number can be obtained by calling 800-555-1212 for directory assistance (no charge); home country embassies for information on tax treaties (no charge); International Operations, Internal Revenue Service, Washington D.C. (no charge); professional tax specialists (charge for services). Most tax accountants do not have alien tax expertise and such expertise should be assessed upon initial contact with the accountant. A list of Internal Revenue Publications is included as ATTACHMENT C.

Attachment A

Prototype of Tax Information
for Foreign Scholars

TAX INFORMATION FOR FOREIGN SCHOLARS

Foreign scholars who are studying, teaching or engaging in research activities in the United States are subject to federal and state income taxation and may be subject to the federal social security tax (FICA) on wages earned by themselves. Dependent earnings are subject to FICA taxation. In addition, states, counties, and cities may impose a variety of taxes on income, real estate, personal property, and goods purchased (sales tax). The following is a general summary of the basic rules applicable to the typical foreign scholar. It is important to remember that each individual's tax liability is unique and thus should be analyzed individually.

FEDERAL INCOME TAX REQUIREMENTS

The U.S. tax treatment of foreign scholars and their families depends chiefly on their status as residents or non-residents and the types of income which they receive. In some circumstances, country of origin may also play a part.

A. Determining Residence Status

The Deficit Reduction Act (DEFRA) of 1984 more clearly spells out definitions for residents and non-residents for tax purposes. Persons entering the U.S. on a permanent resident/immigrant visa are resident aliens for tax purposes upon arrival. As a general rule, all persons, including H-1 visa holders, who are physically present in the U.S. more than six months (183 days) out of the calendar year will be presumed to be resident aliens for tax purposes, which is described as the "substantial presence test" in Internal Revenue Service (IRS) publications (IRS Publication, United States Tax Guide for Aliens-Publication 519). The exceptions are the following:

1. Student present in the U.S. on F-1 or J-1 visas will be considered to be non-resident aliens for the first five years they are here. After five years, if they wish to retain their non-resident alien status for tax purposes, they must apply to the IRS for a continued exemption.

2. J-1 visa holders other than students (visiting scholars, faculty) will generally be considered non-resident aliens for two years. After two years they will be presumed to be resident aliens for tax purposes.

3. Certain treaty beneficiaries (See Section on Tax Treaties)

There will still be provision for Dual Status years, this occurs when an individual is considered a non-resident for part of the year and a resident for the remainder of the year, or vice versa.. The most common dual status tax years would be the year of arrival and the year of departure. These rules are somewhat complex and are discussed in the tax guides (IRS Publications 518 and 519).

The effective date of the new rules is January 1, 1985 for 1985 tax returns. The law is not retroactive so the time clock for provisions of the act began January 1, 1985.

B. Taxation of Resident Aliens

Resident aliens for tax purposes file a tax return on form 1040 and are taxed the same as U.S. citizens. This means that all income is taxed, including income from other countries, and resident aliens may

generally take exemptions and deductions like U.S. citizens. Resident aliens may take advantage of tax treaty benefits only as specified in the treaty.

C. Taxation of Non-resident Aliens

Non-resident aliens for tax purposes file a tax return on form 1040NR and are taxed only on U.S. source income. More precisely, they are taxed at graduated rates on income considered to be effectively connected with U.S. trade or business. Examples of effectively connected income are wages and salary, compensation for personal services, profit from sale of real estate. Other U.S. source income which is not effectively connected with U.S. trade or business is generally taxed at the 30% or lower treaty withholding rate. Examples would include investment income, rents, and annuities. Interest earned from a U.S. bank account is normally treated as foreign source income and is not taxable. If the U.S. has a tax treaty with a foreign country, the withholding tax rate may be reduced.

FILING RETURNS AND OBTAINING REFUNDS

All resident and non-resident aliens with wage income of $1,000 or other "effectively connected" income are required to file an annual tax return. The return may be filed any time after January 1 and before April 15.

In many cases, foreign scholars will be due a tax refund. The United States requires employers to withhold tax on wages earned by employees. The amounts withheld often exceed the amount of tax due, especially for persons working only a portion of the year. In order to obtain a refund, individuals should first obtain a W-2 form (Statement of Earnings) from the employer, which states the amount of tax withheld during the year. A copy of this form is submitted with the tax return. If the amount withheld exceeds the tax liability, the IRS will send back a check for the balance to the individual at the address given to them.

Tax returns are subject to mathematical verification by an IRS computer. If the deductions or exemptions claimed appear irregular, the return may be selected for an audit by IRS Review Agents. Individuals filing false or fraudulent returns are subject to fines and in severe cases to criminal prosecution. Aliens filing a false return may lose their visa and may be precluded from returning to the United States.

Persons with questions about how to complete tax returns, may seek free assistance from the local IRS District Office. The District Office will provide helpful literature, and may provide some assistance in completing tax returns. Those foreign visitors who have complicated problems can write to the Director of International Operations, Internal Revenue Service, Washington D.C. 20225. It is also possible, of course, to seek professional advice. Only a small number of tax specialists, however, are familiar with the tax problems particular to non-residents and there will be fees for specialized advice and assistance.

For information and assistance with federal income taxes, call toll free: 1-800-555-1212 for directory assistance and request the toll free number for federal income tax information in your area.

TAX EXEMPT INCOME

There are only three bases on which a foreign scholar might be exempt from federal income tax.

A. Scholarships and Fellowships

Under U.S. law, genuine scholarships up to certain limits are not taxable to the recipient. A scholarship is an amount paid for the benefit of an individual to aid in pursuing studies or research at an educational institution. Scholarships are not subject to federal income tax, state income tax or social security tax. The award cannot be paid principally for the benefit of the grantor and thus cannot require teaching of classes or laboratory research activities as a condition of the award. Thus, teaching and research assistantships at a university are not considered scholarships and are subject to tax.

B. Tax Treaty

Non-resident alien professors and teachers who are residents of treaty countries and who visit the United States for the primary purposes of teaching and research (some treaties specify only teaching) at a university or other accredited educational institution are not subject to U.S. income tax on compensation received for those activities in the first two years after their arrival in the U.S. Some treaties, e.g. United Kingdom , stipulate that if the individual's 2 year period is exceeded, the exemption is lost retroactively. It is important to note that H-1 visa holders who are residents for tax purposes under the substantial presence test may still claim benefits under applicable tax treaties on income specified in the treaty. All other income will be taxed under rules applying to resident aliens.

C. Minimum Tax Liability

Each year the federal government establishes a minimum income standard for individuals and married couples. All individuals must file a tax return regardless of income level. However, if total income is less than the standard, no taxes must be paid or a full refund can be claimed. Only those individuals earning less than the minimum standard income may claim "exempt" status on the W-4 form.

SOCIAL SECURITY

The United States, like many other countries, imposes a payroll tax to pay for old-age pensions and certain medical benefits. Most wages, up to a federally established ceiling, are subject to a tax. No exemptions or deductions are allowed. The tax is popularly known as the "social security tax", but its technical name is the Federal Insurance Contributions Act Tax, abbreviated FICA on the form W-2 provided by employers. The employer is required to pay a matching amount to the government.

Visiting scholars and students who are in the United states on "F" or "J" visas and whose income is earned in furtherance of the objectives for which they were admitted should not have FICA taxes withheld from their pay, as they are exempt from Social Security tax as long as they have received employment authorization. Members of a student's or scholar's family are not exempt. H-1 scholars are not exempt from Social Security tax.

Even though aliens may never receive any benefits under social security, the United States generally follows the policy of not allowing refunds. However, refunds are allowed for visiting scholars or students who entered on "F" or "J" visas. Members of a student's family are not allowed a refund.

OTHER TAXES

Three other categories of taxes exist. State and local income taxes are withheld from salary and tax returns must be filed each year. The filing time usually coincides with federal tax filings.

Personal property, real estate, and similar taxes are generally assessed annually and the individual is billed directly. It is the responsibility of the individual to register with local tax authorities as required by local law.

Sales, and similar taxes, levied on purchase goods are collected at the time of purchase.

Attachment B

DETERMINATION OF ALIEN LIABILITY

Name _____ Social Security Number _____
Date of birth (mo/day/yr) _____ Country of birth _____
Country of legal permanent residence _____
Current visa class _____ Date authorised stay expires _____

Please answer the following questions by circling the appropriate responses.

At any time during the last six years have you been in the US on a temporary visa? Yes ____ No ____
If so, in what year(s) were you here and on what visa(s)? Year _____ Visa class _____
What were your activities? _____
Have you ever filed a U.S. tax return in which you claimed exemption from taxes? Yes ___ No ___
If so, give year, treaty country, visa category, basis for exemption: Year _____ Country _____
Visa class _____ Basis for exemption _____

IF YOU ARE NOT IN THE US ON A PERMANENT RESIDENT (IMMIGRANT) VISA YOU NEED TO BE AWARE OF THE FOLLOWING US TAX REGULATIONS RELATING TO ALIENS.

1. A non resident for tax purposes may claim only one withholding allowance on form W-4. This rule does not apply to residents of Canada, Mexico, or Japan whose dependents are in the U.S.
2. F and J students are considered nonresidents for five consecutive calendar years.
3. All other J visa holders are considered nonresidents for two consecutive calendar years.
4. All other temporary visa holders are subject to the "substantial presence" test for determination of residence for tax purposes. This rule may not apply to diplomats.
5. An alien who holds a temporary visa but who is determined to be a resident for tax purposes as defined in the US tax regulations is taxable on world wide income.
6. Tax exemption by treaty is permitted only under the terms and conditions specified in the treaty. The alien must make the initial decision to claim tax exemption by treaty.

If you believe that you are entitled to exemption from federal taxes under a tax treaty, you must complete the following:

Country _____
Basis for exemption (circle appropriate number).

1. I am a student.
2. I am engaged in teaching.
3. I am engaged in research.
4. I will be performing duties or providing services covered under the treaty. Please explain _____
   _____

If you hold a temporary visa but believe you are a resident for tax purposes based on the provisions of a tax treaty, you must complete the following:
Country _____ Specific basis for resident status _____
_____

I confirm that the information provided above is true and correct to the best of my information and belief.

Signature _____ Date _____

---DO NOT WRITE BELOW THIS LINE ---

PURPOSE = Employment Tax update INS STATUS = Resident Non-Resident

EMPLOYMENT DATE _____ EMPLOYMENT = Authorized Not Authorized

1. No restrictions 2. On campus only 3. Practical training only
4. Under terms of J-1 only 5. Under terms of J-2 only
6. Under terms of H-1, H-2 or H-3 only 7. Limited by INS _____

(Continued)

IRS STATUS - Resident 1. Alien Registration Card 2. Substantial Presence
3. Prior F or J exemption for calendar years

Nonresident 1. F-1 2. J-1 student 3. J-1 other
4. Substantial Presence until _____
5. Treaty provisions Expires _____
Non residence for tax purposes expires _____ provided non-immigrant status is maintained.

Limited to one withholding allowance on the W-4: Yes _____ No _____
A Canadian or Mexican (2) Japanese with dependents in U.S.

Federally exempt: Yes/ No 1. By treaty 2. Other _____
Exemption expires _____
FICA exempt by visa classification Yes ____ No _____ Expires _____

_____ _____
Signature Date

Attachment C

BIBLIOGRAPHY

IRS PUBLICATIONS FOR USE IN TAX PREPARATION

A. ESPECIALLY HELPFUL FOR NON-RESIDENTS

1. 513 "Tax Information for Visitors to the United States." Short discussion of US taxation and "sailing permit." It assumes that all readers are non-resident aliens for tax purposes.

2. 505 "Tax Withholding and Estimated Tax" Explanation of how to complete W-4. Since W-4 instructions do not have any reference to considerations of NR files, this pamphlet might be helpful.

3. 514 "Foreign Tax Credits for US Citizens and Resident Aliens." Explains how to claim this credit. Can only be used by resident aliens and citizens.

4. 515 "Withholding of Tax on Non-Resident Aliens and Foreign Corporations" Contains instructions for employers and 3 tables: 1) tax rates on various kinds of income; 2) different kinds of income exempt from tax; 3) list of treaties by country.

5. 518 "Foreign Workers, Scholars and Exchange Visitors." Meant for F, J, H, L, and M visa holders. Discusses determination of residency status, tax treaties by category of income, scholarships and fellowships. Filing instructions assume non-resident status.

6. 519 "US Tax Guide for Aliens" Contains best discussion of choice between non-resident alien and resident alien status. More extensive discussion of what constitutes income. Goes into more detail than 518 about about dual-status returns, taxation of various kinds of income, sailing permit.

B. Meant for all filers but explains items about which non-residents may have questions.

1. 463 "Travel Entertainment and Gift Expenses"

2. 508 "Educational Expenses"

3. 520 "Scholarships and Fellowships"

4. 521 "Moving Expenses"

5. 525 "Taxable and Nontaxable Income"

6. 535 "Business Expenses"

7. 910 "Taxpayers Guide to IRS Information and Assistance

C. Tax clearance before departure.
(Attachment D is a prototype of a handout for Tax Clearance Before Departure)

Attachment D

A prototype of handout for tax clearance before departure procedures.

TAX CLEARANCE BEFORE DEPARTURE

*Note:
ALWAYS KEEP COPIES OF EVERYTHING SENT TO THE FEDERAL GOVERNMENT. KEEP COPIES OF ALL INCOME STATEMENTS, TAX RETURNS, TAX LIABILITY DOCUMENTS, TAX RECEIPTS.

CERTIFICATE OF COMPLIANCE

A. What is it? Like most governments, the US government wants assurance that aliens leaving the country do not owe any taxes. It therefore has a requirement that most departing aliens obtain a "Certificate of Compliance"
(also called a "sailing permit" or "exit permit") before they leave. The sailing permit is issued by the Internal Revenue Service (IRS) as evidence that the alien's income taxes have been paid.

B. Who is required to get a Sailing Permit? Students who have F visas and who have not been employed in the US are not required to obtain a sailing permit. F-1 students who have been employed, and persons with J-1 or J-2 exchange visitor visas, and persons in H-1 status are required to obtain a sailing permit.

C. When does one apply for a Sailing Permit? It is not possible to get a sailing permit more than thirty days before departure from the US. The IRS recommends that sailing permits be applied for between 15 and 30 days in advance of departure.

D. Where does one apply for a Sailing Permit? It is possible to get a sailing permit at any IRS office, but it is advisable to get one at the local IRS office which serves the place of employment.

E. What documentation is required for obtaining a Sailing Permit? Sailing permit applicants should keep in mind that they may be asked to provide additional documents, and that personnel at the IRS office will not make telephone calls to confirm information that is given to them orally. Thus, applicants need to have all required documents with them. These documents include:

a. Passport and Form I-94 (Arrival and Departure Record-the small, white paper usually kept in the passport);

b. Ticket for departing from the US, or other evidence of the date of intended departure;

c. Copies of income tax returns for the previous years, and wage and tax statements (W-2 forms) for that period;

d. Cancelled checks showing payment of taxes for the three previous years (if any taxes were required);

e. A wage and tax statement from the employer for the current calendar year or evidence that the financial support is not taxable. Such evidence might be an official letter from the sponsor showing terms of the fellowship or award;

f. Receipts for the sale of any personal possessions which have been sold at a profit.

IV INSTITUTIONAL SERVICES

D. Information Management of International Faculty Records

This chapter will address the topic of information management of international faculty records. Accurate information concerning the precise numbers of international faculty on college and university campuses, their programs of teaching and research, even their source of funding, is important for a variety of reasons. Without such information, it is impossible to consider the wide range of policy issues which is associated with their activity. Additionally, without the ability to store and to retrieve the very specialized types of data associated with the legal status of international faculty, it is impossible to render the legal services alluded to in the earlier chapters of this publication.

The remarkable developments in the computer industry, particularly in the areas of storage technology, have drastically changed the way in which universities keep student records. These developments have also altered the manner in which payroll and other personnel records are kept. Until recently, little attention has been given to the specialized requirements associated with record keeping for international students. Even less attention has been focused on the problem as it relates to the records of international faculty and scholars. Space limitations preclude a detailed analysis of all aspects of record keeping, especially a detailed analysis of the construction of a computerized data base for the management of these records. However, given the fact that many offices which deal with international faculty and scholars will want to either convert an existing record-keeping system to a computerized data base or to improve an existing system, some attention must be given to basic principles which should be followed in establishing a computerized data base for foreign scholar records.

Part I of this chapter deals with the data which should be kept on international faculty and scholars, both from the standpoint of its uniqueness and its relationship to data which might be kept and controlled by other offices within a college or university. Part II addresses the principles and problems of turning the data into a data collection system.

PART I

INTERNATIONAL FACULTY/SCHOLAR DATA

Data on international faculty and scholars can be grouped into six specific categories. The following table gives the reader these groups and their source, i.e., where the data might be entered or "captured" in a university.

TABLE II

GROUP	SOURCES
Immigration Data	International Office
Financial Data	Payroll Office & International Office
Biographical Data	International Office & Payroll Office
Address Data	International Office & Payroll Office
Dependent Data	International Office
Archives	International Office

An analysis of these groups of data with their sources of entry reveals that with the exception of the biographical data and the financial data, both of which are also entered by the payroll office, the data kept on international faculty and scholars is principally entered and controlled by the international office.

It is possible to look at the groups of data slightly differently in terms of their use and the requirements of sharing data with other administrative units in a university, or with external agencies, such as the Immigration and Naturalization Service, the Internal Revenue Service, or even possible local social service agencies, as in the case of dependent data. Viewed in this light the table would appear as follows:

Table II

Group	Reporting/Sharing
Immigration Data	INS/RS Payroll Office
Financial Data	N/A
Biographical Data	Dean's Office Institutional Research
Address Data	Alumni Offices Development Offices
Dependent Data	Payroll Office School Board
Archives	Alumni Offices Development Offices

When viewed together, both Table I and Table II give an interesting profile of the data required for international scholar records. The greatest part of the data is entered by the staffs of international offices. It is used for both internal and external purposes, that is, the data is required for the services provided to the faculty and is reported by the international office staff to other offices within the university and to various agencies outside of the university as well. Little of the data is actually found elsewhere in the university and, with the exception of the financial data, there is no requirement that the data actually be retrieved from another office. The importance of this fact will become apparent when we discuss problems and philosophies of setting up a computerized data base for these records.

Data which is stored on international faculty and visiting scholars does have some unique characteristics, and some specialized information which is not kept for domestic faculty must be kept. Let us examine both the specialized data and some of its unique characteristics, again following the general groupings of data presented in Tables I and II.

Of the groupings presented above, clearly the single most unique one is the immigration data, since little or none of this data will be kept for domestic faculty. There are at least eleven fields which should be kept on each international faculty member. These include: country of birth; citizenship and/or legal permanent residence; passport and I-94 expiration date, number of entries, and any special notations, such as SPLEX, CHINEX, etc; the special numbers which are used by the Immigration Service to identify a person, the alien file number, any visa petition numbers, the exchange visitor program number, and the length of academic appointment.

As noted in the tables, most of the financial data will be kept by the payroll office of a university but there are some specialized additional fields which should be kept by an international office. In the event that a visiting scholar is not funded by a university but rather by an international agency, or his or her home government, this information should be kept.

The basic biographical information which might be kept on an international faculty member does not differ greatly from that which might be kept on domestic faculty, with the possible exception of the Social Security Number, which may or may not be considered as biographical information. Nevertheless, it should be remembered that not all international faculty will have Social Security Numbers initially. A field for a temporary or "dummy" Social Security Number might, therefore, prove helpful.

The address information which an international office should keep on each international faculty member or visiting scholar will be more extensive than the data kept for domestic faculty.

It is very useful to keep the local address, the permanent home address and the forwarding address of each international faculty member. Care must also be taken to allow for lengthy foreign addresses and for postal codes which are different than the standard U.S. postal code system.

Information on dependents will prove unique because, apart form the actual number and names of dependents, no payroll office will keep this data. Complete biographical information and visa information should be kept on each dependent. It is also helpful to note if a spouse or child has received work authorization from the Immigration Service.

An essential part of any record system is the capability of that system to keep an accurate record of those international faculty and visiting scholars who have left the university and each office should have a clear policy on the length of time that the records will be kept. Since the Immigration Service keeps files for a period of five years, that figure is a good guide to follow. The following information will prove essential for such an archive: the forwarding address of the faculty member; his or her immigration history, including a record of changes and/or adjustment of status; and the basic biographical data. A system archiving this information can be as simple as a procedure for keeping files of former international faculty or as complex as a computer system which saves only essential information and allows the user to delete nonessential information from the data base.

PART II

COMPUTERIZING DATA

A recent monograph, Computer Systems for International Education, published by the Interassociational Committee on Data Collection, fully outlines the considerations in organizing a computerized data collection system for international student records. However, there are some essential differences in computerizing the records of international faculty and international students. A brief discussion of these differences will prove helpful.

Unlike student records, which are entered or "captured" by many different offices on a college or university campus, the records of international faculty are entered mostly by the international office, but this varies within systems. This difference permits a simpler design in terms of a data base which does not have to "access" other data bases or even different computer systems. Additionally, faculty records will demand far less in terms of storage requirements. In spite of the fact that a faculty record which contains all the data elements outlined in Part I will be large, that record will still be smaller than an "average" student record. Finally, the data kept on international faculty is used for the most part by an office for internal purposes. External reporting requirements are minimal. Again, this means that a simpler system can be designed and implemented.

What do these differences mean to the staff of an international office? First of all, they mean that "relative" is a relative term and that "simple" does not mean "easy" or "quick." Development of a computerized data base for faculty records might take as long as one year. Also, the differences do not mean that the costs of computerization of faculty records will be small. At the time of this printing, an office can expect to spend approximately three thousand five hundred dollars to arrive at a system which will adequately keep records on a faculty population of between two hundred and a thousand faculty members. (This figure assumes the purchase of a micro computer with a hard disk and also the software, both purchased at educational discount rates.) They do mean that in setting up such a computer system, an office can rely on the power and reduced costs of the micro or personal computer and a commercial data base management package, both of which are designed to handle just such a task.

Once the decision to establish a computer data base for these records has been made, there are certain principles which should be kept in mind in the actual system design. Some of these are found in Computer Systems for International Education. The following are not.

A system must be able to retrieve information on a faculty member by his family name, alien file number, Social Security Number, or any other unique identifying number that might be used by a university or the Immigration Service. It is also helpful to be able to select faculty records using both the first and last, or family name. This minimizes the confusion caused by faculty members with common last names, for example, "Chen."

A complete system should have the capability of tracking a faculty member's immigration history, sequentially. A document history, a magnetic record of each document issued for a faculty member, is a very useful tool.

Any data base should have the capability of accepting and storing "free form" comments. For example, "pending applicant for political asylum."

A data base for international faculty records should have the capability of relating various codes used in international education to other codes, thus providing flexibility in reporting data.

A data base system for international faculty records should have the capability of creating and updating records magnetically. In other words, there should be a system for entering and updating many records at one time, especially in the initial creation of the data base. This facility will save a great deal of time.

Finally, a data base system should have convenient mechanisms for routinely backing up data to prevent its loss.

PART III

CONCLUSION

Good record keeping is an essential aspect of any international office which deals with international faculty and visiting scholars. But it is no substitute for clearly defined administrative procedures. In fact, good record keeping depends on those procedures and on a thorough understanding of all aspects of administrative work with international faculty.

Appendix A

ADDITIONAL REFFERENCES

C. D. Goodwin, and M. Nacht. *Absence of Decision, a Report on Policy Formation and the Lack Thereof.* I. I. E., New York 1983.

Code of Federal Regulations, 8, 20, and 22. U.S. Government Printing Office, Washington, D.C.

A. T. Fragomen, A.J. Del Rey, S.C. Bell. *Immigration Procedures Handbook, A How to Guide for Legal and Business Professionals.* Clark Boardman and Co.,Ltd. 1986. [Available for $60 from Boardman Co., 435 Hudson St. New York 10014]

Interpreter Releases, American Council for Nationalities Service, 20 West 40th st.,New York, N.Y. 10018.

Technical Assistance Guide No.656: Labor Certifications, U.S. D.O.L. 1985. [Available for $11 from Superintendent of Documents, U.S. Gov't. Printing Office, Washington, D.C. 20402]

The Adviser's Manual of Federal Regulations Affecting Foreign Students and Scholars, National Association for Foreign Student Affairs, Washington D.C.

Appendix B

VISA BULLETIN

March 1986

4. Section 203(b) of the Immigration and Nationality Act provides that visas be given to applicants in order of preference classes. However, Section 202(e) of the Act provides that, whenever the maximum number of visas has been made available to natives of a foreign state or dependent area in any fiscal year, in the next following fiscal year visas will be made available by applying the preference limitations to the foreign state (20,000) or dependent area (600) limitation. The provisions of Section 202(e) apply at present to the following chargeability areas: CHINA-mainland born, INDIA, KOREA, MEXICO, PHILIPPINES, and HONG KONG.

5. On the chart below the listing of a date under any class indicates that the class is oversubscribed (See paragraph 1); "C" means current, i.e., that numbers are available for all qualified applicants; and "U" means unavailable, i.e., that no numbers are available.

	PREFERENCE						
CHARGEABILITY	1st	2nd	3rd	4th	5th	6th	NONPREF-ERENCE
ALL CHARGE-ABILITY AREAS EXCEPT THOSE LISTED BELOW	C	03-01-85	C	C	07-22-81	04-01-84	U
CHINA-mainland born	C	03-01-85	C	C	03-15-80	04-01-84	U
DOMINICAN REPUBLIC	C	03-01-85	C	U	U	U	U
INDIA	C	03-01-85	02-08-85	C	04-22-81	04-01-84	U
KOREA	C	01-22-85	C	C	06-15-80	04-01-84	U
MEXICO	C	05-01-77	C	05-01-79	12-22-76	07-22-82	U
PHILIPPINES	05-01-85	08-01-80	10-22-70	01-22-79	12-15-74	03-22-83	U
HONG KONG	06-29-84	03-26-79	07-28-80	12-01-79	10-26-73	10-01-80	U

The Department of State has available a recorded message with visa availability information which can be heard at: (area code 202) 663-1514. This recording will be updated in the middle of each month with information on cut-off dates for the following month.

B. PANAMA CANAL NUMBERS

The Panama Canal Act of 1979 (PL96-70) provides for the admission as special immigrants under subparagraphs (E),(F) and (G) of section 101(a)(27) of the INA of up to 15,000 former employees of the Panama Canal Company or Canal Zone Government, at the rate of no more than 5,000 in any fiscal year. At the present time visas are available to qualified applicants on a "current" basis.

CA/VO - February 10, 1986

APPENDIX

WAIVER OF THE TWO-YEAR RETURN RESIDENCE REQUIREMENT

An exchange visitor who is subject to the two-year return residence requirement cannot file for or be granted permanent residence or certain other non-immigrant visas until that requirement is fulfilled or a waiver is received. In many cases, applying for a waiver of the two-year return residence requirement should precede or occur simultaneously with the labor certification process. Usually, a waiver is difficult and time consuming to obtain. In certain cases, it may be impossible. A request for a waiver, may be made only on any one or more of the following bases:

(i) When the exchange visitor's country declares that it does not object to the waiver;

(ii) Upon a showing of exceptional hardship to the exchange visitor's United States citizen or permanent residence spouse and/or child;

(iii) Upon a showing of probable persecution if the exchange visitor if forced to return to his home country;

(iv) Upon the request of an interested United States government agency.

A. THE NO-OBJECTION LETTER

An appropriate agency of the exchange visitor's country of nationality may issue, by letter, a statement that it does not object to a waiver of the return residence requirement. The letter must be sent through regular diplomatic channels to the USIA. When the letter is received, the USIA will send a request for additional data to the exchange visitor, after the receipt of which the request for waiver will be evaluated and a recommendation made to the INS.

The INS will approve or deny the waiver without the need for any further action on the part of the exchange visitor.

A no-objection letter is not a possibility in every case. In order for the letter to be effective, it must come through diplomatic channels. Thus, it is not possible for nationals of countries with which the United States has not diplomatic relations, to receive a waiver based upon a no-objection letter. Some countries, as a matter of national policy refuse to issue no-objection letters.

In some cases, it may be possible to secure a no-objection letter if the exchange visitor arranges to repay financing provided by his government. This can be explored by contacting representatives of the embassy of the foreign national's government.

B. Exceptional Hardship

The burden of proving exceptional hardship to the United States citizen or permanent resident spouse or child is on the exchange visitor. The waiver request is initiated by filing a Form I-612 with the INS office having jurisdiction over the exchange visitor's place of residence. The application must be supported by ample documentation which demonstrates the claimed exceptional hardship. In addition to the statements of the exchange visitor, independent evidence such as expert testimony could be used.

The exchange visitor must prove that enforcing the return residence requirement would impose exceptional hardship whether the family remains in the United States without the exchange visitor or accompanies him home. While individual factors such as ill health and career disruption standing alone

BERKELEY: ADVISERS TO FOREIGN STUDENTS AND SCHOLA
INTERNATIONAL HOUSE
EXT. 2-2518

GENERAL INFORMATION

for

VISITING SCHOLARS FROM CANADA

The Advisers to Foreign Students and Scholars office is responsible for advising University departments and visiting foreign scholars about visas, health insurance and intercultural programs. If you have any questions, please address them to the Foreign Scholar Specialist or a Foreign Student Adviser.

* * *

Although Canadian citizens are not required to carry their passport when visiting the United States, we advise that s/he have it. When entering the U.S. directly from Canada, s/he is exempt from the regulation which requires all foreign visitors to obtain American visas from an American Consulate or Embassy. Canadian citizens who enter from a third country are required to obtain a visa in their passport. Landed Immigrants of Canada must always obtain American visas before entering.

There are several different visa classifications commonly used for foreign scholars visiting American educational institutions. All foreign visitors, except Canadian visitors entering the U.S. from Canada, automatically receive an Arrival and Departure Record (form I-94) from the Immigration inspector at the port of entry. Canadians crossing the border into the U.S. without visa documentation are regarded to have an implicit B-2 visa. Since scholars may be asked by host institutions to present this Record to show evidence of an appropriate visa status, they should be advised to ask for an I-94 at the port of entry. If the Immigration inspector tells the scholar that he does not need the I-94 form and can enter with the B-2 visa and still be paid honoraria, etc., the scholar should insist on being given the I-94 form with an appropriate visa classification noted thereon as the University of California will not pay expenses nor per diem to scholars holding a B-2 visa.

Visitor for Pleasure (Tourist) B-2 Visa

This non-immigant status requires no supporting documents nor invitations; however, evidence of adequate financial support should be presented to the Immigration inspector. Any Canadian citizen who enters the U.S. wil be considered a Visitor for Pleasure unless s/he specifically requests the Immigration inspector to grant him/her another visa classification. S/He may request the status for up to 1 year, and may or may not receive an I-94 form. S/He may not earn any money while in the U.S.

Visitor for Business (Business) B-1 Visa

This non-immigrant status requires a formal letter of invitation from the host institution(s), which should be presented with the scholar's passport at the U.S. port of entry. The scholar should request the inspector to grant her/him a Business classification for the period needed (up to 1 year and renewable) and to issue her/him an I-94 form which specifies that s/he has a B-1 visa classification for this visit. Canadian scholars who enter with this classificatin may

please turn over

BEST COPY AVAILABLE

receive reimbursement for travel expenses and/or per diem from host institutions. The U.S. regulations also state that scholars with a B-1 classification may not earn any honoraria or salary while in the U.S.; however in practice, many American universities do not adhere to this regulations while others will. The University of California will not pay honoraria or salary to scholars on the B-1 visa. If the department anticipates it may want to pay honoraria or salary to the scholar, or if the scholar thinks s/he may receive honoraria or salary during his visit in the U.S., the host institution should sponsor her/him for one of the following visa classifications. Dependents accompanying B-1 scholars will be classified B-2.

Exchange Visitor (Visiting Scholar) J-1 Visa

This non-immigrant visa status requires a Certificate of Eligibility for Exchange visitor (J-1) Status (form IAP-66) issued by the host institution or authorized funding agency (eg., Fulbright, ACLS—check with our office to see if one is needed). The IAP-66 will be prepared upon receipt of a completed Request for Certificate of Eligibility (form IAP-66) application from the host department. This certificate can be issued for up to 1 year and renewed up to a maximum stay of 3 years. It should be presented with the passport to the U.S. Embassy/Consulate in a foreign country to obtain the visa and then presented to the Immigration inspector at the port of entry and an I-94 form marked J-1 should be requested. Scholars with J-1 status may earn unlimited salary or honoraria from the host institution or agency sponsoring his visa. Contrary to popular belief, this visa is not a work permit allowing a person to work anywhere in the U.S. This classification does not allow the scholar to work anywhere in the U.S. This classification can be used by Visiting Professors, Lecturers, Research Scholars (postdoctoral fellows and faculty on sabbatical leave in the U.S.) Family members (spouse and children only) accompanying these scholars can obtain J-2 visas..

Scholar of Distinguished Merit and Ability (H-1 Visa)

This non-immigrant status requires strong supporting letters and documents attesting to the scholar's distinguished merit and ability in his field and a statement from the University indicating the temporary nature of the position; it requires certification of eligibility by the U.S. Immigration and Naturalization Service before the scholar may actually apply to the American Consulate for the visa (the scholar must obtain this visa through the U.S. Embassy/Consulate in his home country). There is normally a waiting period of 2-3 months after our office petitions the Immigration Service to have your scholar classified H-1. Scholars may be paid unlimited support by the host institution. Visas may be granted for up to 1 year and renewed thereafter. Dependents are classified H-4.

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BERKELEY: ADVISERS TO FOREIGN STUDENTS AND SCHOLARS
INTERNATIONAL HOUSE
EXT. 2-2818

TO: All UC Staff

FROM: Julia Sills, Payroll Office
Marvin Baron, Deputy Director
Tracy M. Gardner, Foreign Scholar Specialist

RE: Payments to Foreign Scholars and/or Short Term Visitors

Payment of honoraria and/or salaries is forbidden to foreign scholars holding B-1 or B-2 visa categories (business and visitor visas). Despite lobbying efforts of the National Association for Foreign Student Affairs to persuade the Immigration and Naturalization Service to change the policy in writing, such changes are not forthcoming.

There is a distinction between the **visa** and the **visa category** of a scholar's stay. The **visa** is the stamp issued by the U.S. Consulate or Embassy abroad and is stamped inside the passport. This is only the permit to enter the U.S. (Please note that some scholars may have B-1/B-2 visa stamps.) The **visa category** is marked on the Arrival and Departure Record (form I-94) stapled inside the passport upon the scholar's arrival in the U.S. The Immigration Inspector at the port of entry determines the **visa category** on the basis of his interview with the scholar and the documents presented by the scholar. This is the information which is most important for payment purposes.

B-1 Visa Category: Scholars holding B-1 (Visitor for Business) visa category may receive travel reimbursements and/or subsistence **only**. Reimbursement requests **must** be accompanied by travel vouchers and a copy of the I-94 form.

B-2 Visa Category: Scholars holding B-2 (Visitor for Pleasure) visa category may not receive payments or reimbursements of any kind. If a scholar is in Berkeley for at least one week, it may be possible to have his visa status changed. Call the Advisers to Foreign Students and Scholars Office (Tracy Gardner or Marvin Baron) for assistance.

J-1 and H-1 Visa Categories: Scholars holding J-1 (Exchange Visitor) visa category may receive honoraria for participation in colloquia, seminars or lectures.

Please note that as of June 1, 1979, all requests for travel reimbursement, per diem or honoraria must be accompanied by a photocopy of the scholar's form I-94 (Arrival and Departure Record). Payment requests cannot be processed without this record.

If your department will be inviting lecturers from abroad and if you are not familiar with the visa regulations and University policies, please contact the Payroll Office and the Advisers to Foreign Students Office well in advance of your scholar's departure from his home country. It is the responsibility of each host department to prepare the scholars adequately (with our assistance if needed) to save possible embarrassment to the inviting department and to the scholar.

Julia Sills: 2-3002
Marvin Baron: 2-2818
Tracy Gardner: 2-9472

rev. rne/1/84

UNIVERSITY OF CALIFORNIA—(Letterhead for interdepartmental use)

Advisers to Foreign Students & Scholars
International House
2-2818

REQUEST for CERTIFICATE OF ELIGIBILITY, form I-20 for POSTDOCTORAL RESEARCH FELLOW

I hereby request the Adviser to Foreign Students & Scholars to issue a form I-20 accepting the below-named alien to the University of California's program number 214.615 as a postdoctoral fellow.

Alien's Name _____ Male ( ) Female ( )

Birthdate _____ Birthplace _____
month date year city country

Legal Permanent
Resident of _____ Nationality _____
Occupation & employer's name
in country of legal permanent residence _____

University of California Appointment: Honorary(non-paid) _____
(Fill in one—give designated title) With Salary _____

Brief description of postdoc's program:

Department, Laboratory or Institute where postdoc will be working:

Expected date of
Arrival in Berkeley _____
Date of Appointment: Beginning _____

Expected date of
Departure from Berkeley _____
Through _____

SOURCE OF SUPPORT	AMOUNT OF U.S.$FOR PERIOD OF APPT.
U.C. SALARY (19900 funds only)	$_____
_____ (Grant to U.C.--give source)	$_____
_____ (Other-give source)	$_____

Will this postdoctoral fellow have been in the U.S. at another institution immediately prior to coming to Berkeley? If so, indicate where, how long, and on what type of visa:

Where _____ HOW LONG _____ VISA TYPE _____
Expiration date of I-94 form _____

Date Ph.D degree completed _____

University office to which appointment
approval was submitted _____ Date
Approved _____

_____ Adm. Ass't _____
Signature of Chairperson/Faculty Host Department _____

_____ Campus Address _____
Name Phone Extension ____ - ____

BC:rne/12/82

date rec'd_____

BERKELEY: ADVISERS TO FOREIGN STUDENTS AND SCHOLARS
INTERNATIONAL HOUSE
EXT. 2-2818

REQUEST for CERTIFICATE OF ELIGIBILITY, FORM IAP-66 for VISITING FOREIGN SCHOLAR (J-1 Visa)

This application may be used to request the IAP-66 form on behalf of a Visiting Foreign Scholar who will research, teach, lecture, consult or participate in seminars or colloquia. The official appointment of this Scholar should be granted by the Dean of the host department's College who will assign a title and the identification card granting certain privileges to your guest. **Request forms without date of Dean's Approval will not be processed.** This form must be signed by the department chairperson and should be sent to the Advisers to Foreign Students & Scholars office two months before the alien's departure from his home country. **Please be sure the form is complete, submit one copy only.** The IAP-66 and instructions to the Scholar will be returned to the host department unless this request is accompanied by an addressed, stamped airmail envelope (80¢ postage—no mailing codes permitted).

Scholar's Name _____ Female ( ) Male ( )
(last) (first)

Birthdate_____ Birthplace_____
(city) (country)

Legal Permanent Resident of_____ (country)___
Citizen of _____ (country)
Highest Degree Earned_____ Date_____ Institution_____
Occupation at Home_____ Employer_____

U.C. Appointment:
(fill in with designated title)

Honorary (non-paid)_____
With UC Salary_____

Purpose of Scholar's Visit at UC:

Host Department, Laboratory or Institute of Scholar:_____
_____

Host Faculty Member:_____ Phone_____

Appointment Dates
begin_____
end_____

Dates in U.S.
Expected Arrival_____
Expected Departure_____

Source of Financial Suppport
1) UC salary (19900 funds)_____ $_____
2) _____ $_____
(grant to UC, give source)
3) _____ $_____
(Scholar's home government)
4) _____ $_____
(Scholar's employer, give name)
5) _____ $_____
(Private U.S. foundation)
6) _____ $_____
(Private foreign foundation)
7) _____ $_____
(International funding agency)
8) _____ $_____
(Other)

please turn over

UNIVERSITY OF CALIFORNIA—(Letterhead for interdepartmental use)

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Will this Scholar visit another U.S. institution **immediately** prior to coming to UCB? If so, indicate cation, length of time and what type of visa s/he will have:

Location_____ Visa Type_____
Date entered U.S._____ Expiration date of I-94 form_____

Will any dependents (spouse and/or children only) join the Scholar? If so, please supply the following information:

Name	Relationship	Birthdate	Birthplace

Will they enter the U.S. separately from the Scholar? **yes ( ) no ( )**

The Dean of the College of _____ (name College) approved appointment on
_____ (give date).

Department, Lab or Institute_____
Campus Address_____
Administrative Assistant or Secretary_____
Telephone Number_____
Chairperson_____ Signature_____
Chair Telephone Number_____

Name, Department/Lab/Institute and Address to whom IAP-66 should be returned (if different f above):

_____
_____
_____

Note: IAP-66 form will be returned to the Host Department 1-2 months in advance of the Scho departure from his/her home country. If the Scholar needs the form earlier, please indicate the re and date you would like the IAP-66 form sent to you._____
_____
_____

Date IAP-66 needed:_____

11/82bjc

BERKELEY: ADVISERS TO FOREIGN STUDENTS AND SCHOLARS
INTERNATIONAL HOUSE
EXT. 2-2818

TO:

FROM: Advisers to Foreign
Students & Scholars

RE:

Enclosed is a form IAP-66, Certificate of Eligibility for Exchange Visitor Status (J-1 visa) and a welcome letter for forwarding to your visitor. When sending on these documents, please request that the scholar read the letter and the IAP-66 carefully so that s/he is aware of the purposes of, and the restrictions pertaining to, Exchange Visitor Status.

The form IAP-66 should be presented to the U.S. Consulate/Embassy at the time the scholar applies for the J-1 visa, and to the Immigration and Naturalization Service inspector at the port of entry in the United States. The same form can be used for a dependent's (J-2) visa. If the family will be entering the United States separately, please notify us, as a separate IAP-66 must be prepared for their use.

For the scholar's protection, the University requires that s/he carry adequate health and accident insurance while in the U.S. Non-immigrant visitors employed full-time for three months or more, and those who are employed 50% time for at least one calendar year, are eligible to enroll in health plans available through the University. Non-immigrant visitors employed less than 50% time or who are not classified as University employees are required to obtain health coverage outside the University program. Information regarding suitable policies for persons in the latter category may be obtained in this office.

Please ask the scholar to visit this office in International House during the first week after arrival; s/he should call 642-2818 to make an appointment to see the Foreign Scholar Specialist. The scholar should bring his/her passport and health insurance policy in English, to the appointment so that we may advise him/her about immigration regulations, provide orientation information and assistance, and complete our records.

It is the responsibility of the academic department to see to it that the scholar reports promptly to this office and to insure that s/he carries out the programs for which s/he was admitted to the United States; and to inform this office of any changes in University status or program and of his/her departure from the University. It is the scholar's responsibility to maintain the proper visa status and to contact this office two months before his/her stay expires if an extension of stay is desired. Failure to comply with the above may result in serious embarrassment to the scholar and to the University. For this reason, your cooperation is earnestly requested. Thank you.

rev. rne/3/84

UNIVERSITY OF CALIFORNIA—(Letterhead for interdepartmental use)

UNIVERSITY OF CALIFORNIA, BERKELEY

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO — SANTA BARBARA • SANTA CRUZ

ADVISERS TO FOREIGN STUDENTS AND SCHOLARS

INTERNATIONAL HOUSE
BERKELEY, CALIFORNIA 94720
(415) 642-2818

FOR EXCHANGE VISITORS TRANSFERRING TO UC BERKELEY

If you are planning to transfer to UC Berkeley, you should read the enclosed IAP-66 form carefully, complete and sign the back of the white page, have your present Exchange Visitor Program Sponsor complete and sign Part III and follow instruction 1 or 2 below.

1. If you will be coming to Berkeley directly from your current host institution without leaving the U.S., you must submit our IAP-66 form and I-94 form to the Immigration and Naturalization Service having jurisdiction over your current institution. When INS approves the transfer, they will extend your I-94 form and note a transfer of universities. The I-94 form and the pink copy of the IAP-66 will be returned to you at your Berkeley address; be sure to include it. If you are married or have children with you, enclose their I-94 forms when applying for the transfer from INS.

2. If you plan to travel outside the U.S. before coming to Berkeley, please check to be sure that your J-1 visa stamp inside your passport is valid beyond the date you intend to reenter. If your visa is still valid, use the enclosed IAP-66 for reentry. If your visa stamp will have expired before your reentry date or the number of entries has been used up, you must take the IAP-66 to a U.S. Consulate or Embassy in the foreign country you are visiting and obtain a new J-1 visa. At the port of entry, upon presentation of the IAP-66 and the new visa, you will be readmitted to the U.S. and given a new I-94 form. The pink copy of the IAP-66 should be returned to you and kept inside your passport for future reference.

If you make any changes in your plans to attend our University, please notify this office immediately.

If you have any questions concerning your transfer, please consult your Foreign Student/Scholar Adviser, Exchange Visitor Program Sponsor or this office well before your move.

After your arrival in Berkeley, please call 642-2818 for an appointment with me. Wishing you a safe journey to Berkeley,

Sincerely,

Tracy M. Gardner
Foreign Scholar Specialist

encl.
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Berkeley: Advisers to Foreign Students & Scholars
International House 642-2818

REQUEST FOR EXTENSION OF STAY OF EXCHANGE VISITOR ON J-1 VISA

Use this form to request extensions of stay for Visiting Scholars at UCB on J-1 visas. Please complete and sign the form and give it to the scholar, who should make an appointment to see the Foreign Scholar Specialist. The scholar should bring this form, all family passports and proof of health insurance to his appointment.

Name of Exchange Visitor: _____

Legal Permanent Resident of: _____

Occupation and Employer in Country of Legal Permanent Residence: _____

University Title: Honorary (non-paid) _____
U.C. Salary _____

Brief Description of Scholar's Program: _____

_____

_____

Host Faculty Advisor: _____

Department, Laboratory or Institute at which scholar is engaged: _____

Date of arrival in U.S.: _____ Date of arrival in Berkeley: _____

Expiration date of stay in U.S: _____ Termination date of work in Berkeley: _____
(See I-94, Arrival-Departure record)

Departure date from Berkeley: _____ Departure date from U.S.: _____

Source of support:	Amount in U.S. $ (yearly)	Per Month
1. U.C. Salary _____	$_____	_____
2. _____ Research grant to UC (name source)	_____	_____
3. _____ Other (name source)	_____	_____

Local address of scholar:

_____

_____

Phone: _____
(home and office)

Signature: _____
Department Chairman

Name: _____

Campus Address: _____

Secretary/AA: _____

Phone: _____

Scholars accompanied by family, please furnish the following information:

FAMILY MEMBERS ACCOMPANYING SCHOLAR:

Name	Relationship	Birthdate	Birthplace

EXTENDING PERMISSION TO REMAIN IN U.S. ON J-1 VISA

Enclosed is a Form IAP-66, Certificate of Eligiblity for Exchange Visitor Status. Please read and complete the instructions on the back of the white and pink pages. If you have a family, please write the expiration dates of their passports on the attached "family letter." To apply for extension of stay in the United States, submit your I-94 (Arrival and Departure Record) and those of your family, if applicable, and the signed IAP-66 to:

Immigration and Naturalization Service
630 Sansome Street,
San Francisco, CA 94111

Your passport must be valid for at least six months beyond the period of extension of stay that you are requesting. If INS grants you an extension, it will be indicated on the back of the I-94 form and on the lower left corner of the pink copy of the IAP-66. INS will retain the white and yellow copies and return the other forms to you. You should keep the I-94 and IAP-66 in your passport for future reference.

INS will only adjudicate emergency applications in person. If you feel that you have an extremely urgent request, you may take it to INS personally and the officers may evaluate your request while you wait. The office opens at 7:45 a.m. and closes at 2:30 p.m. We recommend that you arrive early. Doors open at 7:00 a.m. and they stop accepting applications at 1:30 p.m. Applications are accepted in room 200.

If you submit your papers by mail, photocopy your I-94 forms and any other materials that you are sending, and keep the copies. Send originals with IAP-66 certified mail, return receipt requested. The post office will notify you when the papers are delivered. You may have to wait as long as four months to receive your I-94 and pink IAP-66 forms, which will be returned to our office by mail. We will call you upon receipt of the approved extension so that you may pick up your forms.

If you will be leaving the U.S. for a short time to visit countries other than Canada around the time of your renewal date, you may extend your stay upon reentry to the U.S. If your visa stamp has expired, it will have to be renewed. Go to an American Embassy or Consulate in the country you are visiting and present a new IAP-66 and your passport. Upon reentering, show your IAP-66 and passport to the Immigration Inspector at the port of entry. You will receive an extension at that time.

If you want to visit Canada, you must obtain an extension from INS beforehand, as Canada requires that you have a valid passport, valid I-94 form and valid pink copy of the IAP-66.

Directions to INS:

Take BART to the Montgomery Street Station in San Francisco. Walk north on Montgomery Street to Washington Street. Turn right, go two blocks. INS is on the corner of Washington and Sansome Streets.

If you have any questions, call 642-9472 or 642-2818.

BERKELEY: Advisers to Foreign Students & Scholars, International House 642-9472

REQUEST FOR H-1 VISA CLASSIFICATION for VISITING FOREIGN SCHOLAR

I hereby request that you petition the Immigration and Naturalization Service to classify the below-named alien as an H-1 alien of distinguished merit and ability so that s/he may be admitted to the United States to be temporarily employed at the University of California, Berkeley.

Name of Alien _____

Highest degree earned _____ Date _____ Insititution _____

Location of U.S. Consulate at which s/he will apply for visa _____

Title of UC Berkeley appointment _____

Period of appointment: From _____ Through _____

Source & amount of financial support for period of appointment _____

Address in home country to which alien will return _____

Present address _____

Proposed port and date of entry into the U.S. _____

Date of birth _____ Place of birth _____

Country of citizenship _____ Country of last permanent residence _____

Present occupation & employer _____

If in the U.S. now, how long _____ what kind of visa _____ I-94 expiration date _____

Description of services alien will perform under UC Berkeley appointment _____

_____

_____

Will other organizations employ alien during same time period? _____ If yes, name organizations, job title, salary, number of hours to be worked per week (enclose letter from other employer) _____

University office from which appointment approval requested _____ Date approval granted _____

Name _____ Signature _____

Title _____ A.A. or secretary _____

Department _____ Campus address _____

Campus phone _____

NOTE: Send one copy of this form, signed by the department chairperson, to the AFSS Office, with 3 copies each of highest degree/diploma (with certified English translation if necessary), c.v., bibliography, letter of temporary job offer. Also, remit a check for $35, payable to the Immigration and Naturalization Service, to cover the filing fee. This request must submitted to the AFSS OFFICE at least 3 months prior to date you wish to employ the scholar.

BJC/sh5/83

Advisers to Foreign Students & Scholars
International House
642-2818

VISITING SCHOLAR PROGRAM

UNIVERSITY OF CALIFORNIA, BERKELEY

HONORARY FOREIGN SCHOLARS

The University encourages an atmosphere of vigorous scholarly exchange between its faculty, students and staff and visiting scholars from other institutions or organizations, be they American or foreign. It requires all honorary (unpaid) visiting scholars be approved by the Dean of the College. This screening process is to ensure that everyone granted the special privileges of a visiting scholar at our University has sufficient prior academic training to contribute his field of knowledge to our campus community. Those advanced graduate students from other institutions coming here to continue their research or audit classes are expected to seek admission and enroll as a registered student. Aliens to be employed must follow usual University hiring procedures.

Each College has a Visiting Scholar-Postdoctoral Fellow application form. It may be obtained by calling your Dean's office:

Graduate Division (L & S)	2-5472
Chemistry	2-3451
Education	2-3726
Engineering	2-5934
Environmental Design	2-0830
Law	2-3064
Natural Resources	2-7171
Optometry	2-3414
Public Health	2-2773
Public Policy	2-4670
Social Welfare	2-4408

You may wish to consult the **Checklist for Departments.** Please bear in mind that the following requirements for visiting scholars must be met:

Eligibility Requirements

1. Ph.D. degree or
2. If no Ph.D. degree, must be
   a) Faculty member in Japanese, European, Canadian, Australian or New Zealand institution, or
   b) Letter from host department requesting exemption, stressing special contribution scholar will make to the department, must be sent to College Dean for approval.

Title Designations for Honorary (unpaid) Appointees

Category I: For appointees whose doctoral degrees have been conferred within 3 years of commencement of the appointment. An appointee in this category may need to have his title changed, according to this regulation, during his appointment period.

Research Fellow - standard title for this category

Postdoctoral Fellow - must be engaged in postdoctoral study and training program

Category II: For appointees whose doctoral degrees have been conferred more than 3 years before commencing date of the appointment or whose appointments have been based on experience and/or training.

Research Associate - standard title for this category

Guest of the Department - appointees visiting UCB for 1 quarter or less

Visiting Scholar - for appointees who are particularly distinguished in their fields, regardless of duration of appointment

Requesting Visa Documents: Application should be made to the Dean by submitting the **Visiting Scholar-Postdoctoral Fellow form, and approval signed and dated on that form.** If the scholar is not a U.S. citizen and does not hold a permanent resident (immigrant) visa in the U.S., after receiving approval, you may request that appropriate visa documents be prepared by this office by using one of our Request forms. Please write the College Dean's name and approval date on the Request form before submitting to our office.

Permanent Postitions: If there is a possibility that this will become a permanent position, special consultation with the Advisers to Foreign Students and Scholars is required.

Identification Cards: The I.D. card is issued by the Dean's office for use of libraries and other campus facilities (Cowell Hospital Student Health Service, recreation facilities, etc.). Departments should notify the Dean's office when the scholar arrives so that the card may be issued. Please remember that if you extend the original period of stay for your visiting scholar, you must request the Dean's office to extend the I.D. card as well.

Visa Classifications

Category I Scholars

These scholars must have earned their Ph.D. degree within the last 3 years in the U.S. or abroad. They may use an F-1 or J-1 visa category as long as they have an official postdoctoral position (1-3 years depending upon the field of study). For students graduating from a U.S. institution with an F-1 visa, this allows them more time than their Practical Training F-1 visa would allow (12 months).

For **first-time-at-UCB scholars** wanting the F-1 visa, please use the yellow **Request For Certificate of Eligibility, form I-20 for Postdoctoral Research Fellow** application form; submit to AFSS office 3 months prior to scholar's departure from home country or other U.S. institution. **Extensions** of permission to stay in the U.S. should be requested in writing 1 -2 months before the expiration date on the I-94 form held by the Postdoctoral Fellow. The host professor should address a letter to the Immigration and Naturalization Service indicating that he wishes to continue the postdoctoral study program of the scholar. The letter should include the dates of extension requested (one year at a time), a brief description of the study program, and the source and amount of financial support for the period requested. This letter should be brought by the scholar with his/her passport (and any dependents' passports) for an appointment with the Foreign Scholar Specialist 2 months before the expiration date of his/her I-94 form. An I-538 form will be prepared at that time and instructions given to the scholar on submitting these documents with a $15 fee to INS.

Postdoctoral fellows for whom you want the J-1 visa, please follow instructions below.

working at Berkeley upon receipt of the approval notice and Form I-94. Please note that the H-1 visa classification of the scholar begins on the date of approval; the period of approval by INS may or may not coincide with the dates of our request and your official appointment.

Extensions of the H-1 must be requested **two months** before the expiration of the scholar's stay. Please instruct the scholar to make an appointment with the Foreign Scholar Specialist and bring the passports and I-94 forms of the entire family, if applicable, and two copies of a letter from the chairperson or faculty host detailing the purpose and length of the proposed extension, and the salary to be paid. The fee will be $15 or $50, depending on the original H-1 petition. We will prepare the form requesting an extension and instruct the scholar on submitting the necessary documents to INS.

Visa versus Stay

The **visa** (stamp on passport page) is issued by the U.S. Consulate or Embassy in a foreign country; it may not be obtained within the U.S. The visa governs the time period and number of times a person may seek to enter the U.S., provided he has the required accompanying documentation (form IAP-66 for J-1 visa, form I-171C for H-1 visa, form I-20 for F-1 visa, letter of invitation for B-1 visa). The length of time given the scholar upon entry depends upon country of citizenship and the nature of his visit.

Stay refers to the time period granted an alien by the Immigration and Naturalization Service inspector at the scholar's port of entry. Every alien entering the U.S. is required to complete a Departure Record (form I-94) (the only exception is given to Canadian citizens entering the U.S. directly from Canada) which the INS inspector will mark with the date and location of entry and the expiration date of the scholar's permission to stay. This form I-94 is stapled inside the passport. Extensions must be requested 1-2 months in advance of this date.

The I-94 indicates the visa classification of the scholar for this particular visit to the U.S. and how long s/he is permitted to remain in this country. Although some scholars hold visas from previous visits, unless they have appropriate accompanying documentation when entering the U.S., they most likely would not be issued that visa classification. When requesting payments from the University to your scholar, a photocopy of the I-94 form must accompany your request to demonstrate payment eligibility.

Application for Change of Visa Classification

If you have a scholar whose visa classification should, in your opinion, be changed, please call us to discuss the specific case. Requests for change of status often require an Application for Change of Status (prepared in this office), accompanying documentation and a $15 fee payable to INS.

Mandatory Health Insurance Requirement

The University requires that all visiting scholars be covered by health insurance which includes the following benefits:

hospitalization 50 x $400/day	$20,000
surgical fees	5,000
doctor's visits, X-rays, miscellaneous & preexisting conditions	6,000
	$31,000

Scholars on the payroll not covered by employee benefits and those who are honorary scholars may enroll in one of the health insurance policies available to visiting foreign scholars through this office. They must enroll during their first thirty days on campus and can do so when they come to register with the Foreign Scholar Specialist, or by seeing the Health Education Specialist or her assistant, in the AFSS office.

*****

Questions regarding appointments should be addressed to the Dean of your College.

Questions regarding visas or health insurance may be addressed to the Advisers to Foreign Students and Scholars office.

Questions regarding payment should be addressed to the Payroll Office--Foreign Payroll Desk.

tmg 3/84

Massachusetts Institute of Technology
International Visitors Office
Information Center
Room 7-121 77 Massachusetts Avenue
Cambridge Massachusetts 02139

SUMMARY PROCEDURE FOR FILING IMMIGRANT VISA APPLICATIONS

There are three basic steps involved in obtaining an immigrant visa on the basis of a job offer when the individual is in the United States:

1. Obtaining a labor certification from the Department of Labor.

2. Filing a preference petition for assignment of a number within the quota for a particular immigrant category with the Immigration and Naturalization Service (INS).

3. Filing an application for adjustment of status from non-immigrant to immigrant (i.e. permanent resident) if in the United States or a consular visa application if abroad.

The amount of time for immigrant visa applications to be approved varies from case to case although the total amount of time may be one year. A labor certification takes approximately one to five months and a preference petition and adjustment application can take two to six months or longer. A visa number from the quota must be available immediately in order to file both the preference and adjustment of status applications. It is often necessary to wait for the visa number to become available which adds even more time to the process. Because of this lengthy process, it is extremely important that Ms. Virginia Lyons, Assistant Director, International Visitors Office, Information Center be consulted as soon as possible when an appointment has been, or is about to be made, to any foreign national in order to determine the best course of action.

Those outside the United States who are applying for immigrant visas in American Consulates and Embassies will need to check with the Consulate or Embassy regarding the processing time. There are frequently considerable backlogs at the busiest of these.

A brief summary of each of the three steps is given below:

1. Labor Certification

Any person wishing to immigrate to the United States on the basis of profession must have a specific job offer, which is filed with the Department of Labor (DOL) by the employer. "Labor certification" is a prerequisite for applying for an immigrant visa.

There are three ways to obtain labor certification. The Department of Labor is responsible for two kinds of labor certification which are

Massachusetts Institute of Technology
International Visitors Office
Information Center
Room 7-121 77 Massachusetts Avenue
Cambridge Massachusetts 02139

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Questionnaire

In order to serve your needs as a practitioner in foreign scholar services, please respond to the following:

Name _____ Position _____
Institution _____ Address _____
Telephone _____ _____

1. How many foreign scholars at your institution this year (approximately)?
   F-1 Post-Docs_____ J-1 _____ H-1____Permanent Residents cases each year? _____

2. Is your service to scholars unit administratively related:
   _____ separately as a foreign scholar office
   _____ to and housed with an International Student Office
   _____ some other unit (please describe: _____)

3. To whom do you report? _____

4. Do you have access to local professional peers as resources to your work? _____
   _____ foreign student/ scholar advisors
   _____ immigration attorneys
   _____ other (describe: _____)

5. On a scale of 1 (least critical) to 5 (most critical), how would you describe your needs as a foreign scholar practitioner? (circle one for each)

Institutional policies/procedures	1	2	3	4	5
Legal considerations	1	2	3	4	5
Tax considerations	1	2	3	4	5
Data management	1	2	3	4	5

6. On a scale of 1 (least adequate) to 5 (most adequate) how did the following discussions meet your needs? (circle one for each)

Institutional policies/procedures	1	2	3	4	5
Legal considerations	1	2	3	4	5
Tax considerations	1	2	3	4	5
Data management	1	2	3	4	5

7. Overall, what is your evaluation of this working paper?

8. If this paper were to be expanded into a more developed publication, what else should be included?

9. Could you profit by professional consultation and networking on foreign scholars, such as an "information/ form bank" where you could call upon other institutions' resources? _____
   If so, how would you suggest the consultation and networking be organized and cordinated?

10. Any other comments?

Please return to: Clay Ballard, Director
Services for International Students and Scholars
University of California, Davis
Davis, California 95616
(916) 752-0864

BEST COPY AVAILABLE

might be insufficient to establish a hardship claim, the totality of the circumstances must be considered in a cumulative fashion in order for the INS's decision to be valid.

If the INS does not find hardship, the decision may be appealed to the AAU.[1] If hardship is found. the case will be transmitted with a Form I-613 to the USIA. While the sole statutory function of the USIA is to comment on what effect, if any waiving the return residence requirement would have on the problem and policy objectives, USIA does look at the facts underlying the hardship claim.[2]

The USIA sends its finding to the INS which then decides the case. An adverse decision can be appealed to the AAU.

C. PERSECUTION

Frequently, a request for waiver will be based on a combination of hardship to relatives and a well-founded fear of persecution. The standard of proof for persecution cases is the same as in Requests for Asylum. That is, the applicant must prove that he has a well-founded fear of persecution on account of race, religion or political opinion. Again, the case must be supported by ample evidence.

Although there is no legal requirement that they do so, in some cases based on persecution, the INS or the USIA may request an opinion from the State Department's Bureau of Human Rights and Humanitarian Affairs ("BHRHA"). This may cause a lengthy delay in the resolution of the case.

D. INTERESTED GOVERNMENT AGENCY

A waiver based upon the request of an interested government agency, if such a request can be obtained, is the best alternative both for probability of success and speed of resolution. An agency may request a waiver even though the exchange visitor does not work directly for it. Generally, the agency must be able to state and explain each of the following:

(1) That it has an interest in the exchange visitor's work;

(2) That compliance with the return residence requirement would be clearly detrimental to a program or activity of official interest to the agency; and

(3) That granting of the waiver would be in the public interest.

Most agencies have their own criteria and procedures for reviewing waiver requests which are set out in the Federal Register or Code of Federal Regulations. A copy of the criteria can usually be obtained by mail from the agency.

Any agency with an interest may request a waiver for the exchange visitor. That request is made by the agency to the USIA. The USIA reviews the case considering the policy, exchange program and foreign relations aspects. If it decides favorably, the USIA recommends that the INS issue a waiver, which it generally does. In 1982, the USIA recommended favorably on all the interested government agency waiver requests it received. It should be observed, however, that most interested federal agencies have very rigorous criteria and will not act on behalf of a foreign national unless that person's work is very important.

---

[1]The AAU, the Administrative Appeals Unit, is the newly created group within the INS Central Office which handles appeals.

[2]In 1982, of the 236 hardship claims received by the USIA only 47 received negative recommendations. This trend has not continued however, with both the INS and the USIA becoming stricter in analyzing hardship waivers. In March, 1985, the AAU issued a series of decisions in hardship waiver appeal cases, affirming the denial in each case.

CHECKLIST FOR DEPARTMENTS

Hosting Visiting Foreign Scholars

PRE-ARRIVAL DATE

I. Approval from Dean's Office

a) Visiting Scholar/Postdoctoral Research Fellow application submitted to Dean's Office _____

b) Approved and signed application returned by Dean's Office _____

II. Visa Request to Advisers to Foreign Students & Scholars Office

a) If position is permanent (tenure/tenure track faculty or permanent research position) contact AFSS to consult on appropriate non-immigrant visa for entry to U.S. _____

b) Submit completed, appropriate visa request form to AFSS (be sure to include Dean's date of approval official title) _____

c) Visa documents received from AFSS (IAP-66, I-20 or I-171C) _____

d) Visa document sent to scholar _____

POST-ARRIVAL

I. Scholar Visits Host Department

a) Department requests I.D. card from Dean's Office _____

b) Introduction to staff and departmental facilities; give I.D. card and Visiting Scholar privilege list to scholar _____

c) Health insurance screening--all Visiting Foreign Scholars are required to have satisfactory health insurance

(1) Does the scholar have health insurance from home country? If the scholar has own health insurance, AFSS will review and recommend supplemental insurance if _____

please turn over

Massachusetts Institute of Technology | International Visitors Office | Information Center | Room 7-121 77 Massachusetts Avenue | Cambridge Massachusetts 02139

INSTRUCTIONS FOR FILING ADJUSTMENT OF STATUS APPLICATIONS

Once the preference petition, adjustment of status application, and accompanying documents have been prepared, you should submit them to the Immigration and Naturalization Service (INS). The address is:

Immigration and Naturalization Service
John F. Kennedy Building - Room E132
Government Center
Boston, Massachusetts 02203

The INS filing office (Room E132) accepts adjustment applications from Monday to Thursday. The office is open from 8:00 a.m. to 4:00 p.m. It is advisable to arrive early.

Interviews are scheduled at least two months after filing the documents. If a "prima facie" approvable case is presented, employment authorization will be granted (but it must be requested) while the applications are pending.

Please send a copy of your receipts, employment authorization and interview date to the International Visitors Office, along with a copy of any other documents given to you by INS at that time.

During the period that you are waiting for the interview, the FBI's records will be checked. The Immigration Service will request a visa number from the Department of State after you have been interviewed. If all goes well, you will be informed after the interview that you have been approved for the permanent resident visa. Your passport can be stamped that you are a permanent resident and you can travel with this notation. Your "green card" will be sent to you later (this may take 6 months or more).

If you need to leave the U.S. while your adjustment of status application is pending, it may be possible to obtain INS permission if the trip is for a pressing business or family reason. Please call the International Visitors Office for more information regarding this approval which is called "Advance Parole".

Note:

You should notify the International Visitors Office and the Payroll Office immediately once you are considered a permanent resident. Your income tax status may be affected by the new visa.

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BEST COPY AVAILABLE

_____ 7. Evidence of the foreign national's authorship of published scientific or scholarly articles in the field for which certification is sought in international professional journals;

_____ 8. Evidence of the display of the foreign national's work at artistic exhibitions in more than one country.

Forms

_____ 9. "Application for Alien Employment Certification" completed as follows:

_____ Part A "Offer of Employment Certification" filled out in draft form by the Department Head;

_____ Part B "Statement of Qualifications of the Alien" filled out in draft form by the foreign national;

_____ 10. Form I-140 "Petition to Classify Preference Status of Alien on Basis of Profession or Occupation". Part I (questions 1-17) should be filled out by the foreign national for whom we are applying. Part II will be completed and signed by MIT.

Fees

_____ 11. Filing fee of $50.00, payable to the Immigration and Naturalization Service (in a check or money order).

Other Documents

_____ 12. Curriculum vitae

_____ 13. Copies of degree certificates

_____ 14. List of publications

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Massachusetts Institute of Technology | International Visitors Office | Information Center | Room 7-121 77 Massachusetts Avenue | Cambridge Massachusetts 02139

Blanket Labor Certification Checklist:

A blanket certification can be granted by the Immigration Service to an individual who is of exceptional ability in the sciences or the arts and world-renowned in the field of specialization. Approval of these applications is difficult to obtain and eligibility is based on the strong documentation presented. The following should be compiled and sent to:

Virginia D. Lyons
Associate Director, Information Center
and Head, International Visitors Office
MIT, Room 7-121

Check here and attach in duplicate:

_____ 1. Evidence testifying to the current widespread acclaim and international recognition accorded the foreign national by recognized experts.

In addition, documentation from at least two of the following seven groups must be presented:

_____ 2. Documentation of the foreign national's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;

_____ 3. Documentation of the foreign national's membership in international associations in the field for which certification is sought, which require outstanding achievements of their members, as judged by recognized international experts;

_____ 4. Published material in professional publications about the foreign national. The title, date and author of the material should be given;

_____ 5. Evidence of the foreign national's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought;

_____ 6. Evidence of the foreign national's original scientific or scholarly research contributions of major significance in the field for which certification is sought;

A full page copy of the ad should be sent by the department to Ms. Lyons.

- The position should be re-posted at MIT for a minimum of 10 working days. This notice does mention MIT. If there are any applications they should be evaluated and included in the other material reported to the Department of Labor.

- If resumes are received at the Job Center because of an advertisement or the Job Bank, they will be forwarded to the department for a written evaluation.

  If a journal ad was placed, a written report will be required thirty days after the ad was published.

  If newspaper ads were placed, a written report will be required at the end of the thirty days that the position was on the Job Bank.

3. When the position has been removed from the Job Bank, the application is transmitted by the Job Center to the State Employment Service. The State Office refers the application to the local Regional Certifying Office of the Department of Labor, located in Boston. This office handles all cases for labor certification in New England.

   The Department of Labor processes the applications in chronological order. Delays in response from one to four months or longer are common and should be expected.

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Procedures After Filing the Application

IV. After the labor certification is submitted to the Division of Employment Security, the following steps are taken:

1. The Division of Employment Security calculates the prevailing wage by checking other institutions in the area.

2. (a) If the search was completed and the necessary advertisements appeared within the previous six months and the documentation is in compliance with the Department of Labor's procedures for labor certification, it is possible to request and obtain a waiver of additional search requirements. When this happens, the processing time for labor certification is approximately 1-3 months and no further action is required on our part.

(b) If the search took place more than six months before the case was filed or if the material does not comply exactly to the DOL requirements, the following steps are required:

- The Job Center prepares a Job Order and attempts to recruit U.S. workers for thirty (30) days by placing the position on its Job Bank.

- The Job Center determines whether additional advertisement(s) should be placed in either a local newspaper or a professional journal.

If advertisements are to be placed in a newspaper, it should be done in the following manner:

An advertisement is placed in the Boston Globe for three consecutive days, referring applicants to:

Division of Employment Security
Charles F. Hurley Building
Government Center
Boston, MA 02114

The DES will assign a case number which must be included in the ad.

MIT MAY NOT BE MENTIONED IN THE AD.

Full page copies of the three ads should be sent by the department to Ms. Lyons.

If an advertisement is to be placed in a professional journal the following applies:

One ad is placed in the next edition of the appropriate publication referring applicants to:

Division of Employment Security
Charles F. Hurley Building
Government Center
Boston, MA 02114

MIT MAY NOT BE MENTIONED IN THE AD.

_____2. The request by the department head, laboratory, or center director to the appropriate Dean or Vice President or the Provost for approval of the particular search plan. This will include a brief statement of the qualifications being sought and the way the position will be advertised. (Optional).

_____3. The report presented to the appropriate Academic Council member for approval indicating that the approved search was followed with detail as to the candidates generated and considered, the method of evaluation, and the reasons for the preferred choice.

DOCUMENTATION REGARDING THE FOREIGN NATIONAL SELECTED (these may be assembled by the foreign national and forwarded to Ms. Lyons)

_____4. Several letters of recommendation attesting to the foreign national's superior academic or scholarly achievements.

_____5. Documents attesting to the degree of the applicant's educational or professional qualifications, such as:

_____ Curriculum vitae,

_____ a notarized copy of the highest degree certificate,

_____ list of publications, or

_____ other evidence of excellence,

_____6. Evidence that the foreign national has all the required education, training, and experience contained in the advertisement, if not already contained in items 4 and 5.

FORMS

_____7. Application for Alien Employment Certification completed as follows:

_____ "Part A" Offer of Employment filled out by the Department Head (Two (2) signed copies are needed).

_____ "Part B" Statement of Qualifications of Alien filled out by the foreign national. (Two (2) signed copies are needed),

PLEASE NOTE: The description of the position and requirements on the "Job Offer" form must conform exactly to the job description as advertised.

Virginia D. Lyons
Associate Director, Information Center
and Head, International Visitors Office
MIT, Room 7-121

PLEASE SUBMIT THE ORIGINAL AND ONE COPY OF ALL THE MATERIAL REQUESTED BELOW.

Check here and attach:

SEARCH DOCUMENTATION

_____1. Summary letter from the department head outlining in detail the search procedure, the number of applicants, the number given serious consideration for the position, the reasons for not hiring the other persons interviewed for the position, the reasons why the foreign national selected was qualified for the position.

The department should provide as much information as possible in the reasons for rejecting other applicants in order to avoid requests for more information and resumes from the Department of Labor. A chart showing the required qualifications and the area(s) in which the other applicants were found unqualified has proved an effective means of demonstrating the reasons for rejection.

The documentation should demonstrate that the department has been unsuccessful in recruiting U.S. workers and has reason to believe that it will continue to be unsuccessful in its recruitment efforts. The search procedure will vary depending on the department and field, however, the Department of Labor will expect the following recruitment efforts to be completed prior to our submitting the application:

PLEASE NOTE: ALL ADS AND NOTICES MUST BE IDENTICAL

_____a) *A copy or copies of advertisement(s) placed in a professional journal(s), including a salary range:

_____b) *A copy of an advertisement in the Boston Sunday Globe, including salary range;

_____c) A copy of a notice posted at MIT for a minimum of ten (10) working days, including a salary range:

_____d) If it is the practice of the department to contact other institutions about an available position, then a copy of the letter sent to these institutions and a list of the institutions or other candidate sources contacted should be included.

* PLEASE INCLUDE THE FULL PAGE ON WHICH THE AD APPEARED.

Massachusetts Institute of Technology | International Visitors Office | Information Center | Room 7-121 77 Massachusetts Avenue | Cambridge Massachusetts 02139

LABOR CERTIFICATION PROCEDURES FOR RESEARCH POSITIONS

General Information

Labor certification is the first step toward obtaining a permanent resident visa based on employment.

Approval of a labor certification is based on a showing that no American citizen or permanent resident applicant was qualified for the position and that the prevailing wage is being or will be paid.

Search Requirements

The Department of Labor no longer requires that a search be conducted prior to filing an application. However, if a search has not been done before filing it will be required after filing and will follow the format described below.

MIT's own serious search procedures may necessitate a search regardless of the change in Department of Labor regulations. If a search will be conducted before filing the application the department should proceed as follows:

I. After speaking to Virginia Lyons regarding the position and the foreign national to determine that MIT will support the application, the department should next speak to its Personnel Officer regarding the job description and the proposed salary range, indicating that it hopes to fill the position with a foreign national and that a labor certification may follow.

II. Before advertisements are placed Ms. Lyons and the Personnel Officer should see the copy to be sure that all necessary information is included. The Personnel Officer will place the ads for the department. It is important that all ads be identical and that salary range information be included. Departments should note that a preference in a job description will be considered a requirement.

Please note: If you pay the foreign national above the bottom of the salary range you will probably have to re-advertise the position when the application is filed with the Department of Labor (DOL). It is DOL's position that you are willing to pay the foreign national more than you would an American citizen or resident and that you would have to advertise the job with exactly the same conditions that have been offered the foreign national.

III. At the conclusion of the search, if the foreign national is found to be the only qualified applicant and the department wishes to proceed with the labor certification, the following documentation should be sent to:

PLEASE NOTE

Applications for labor certification for college and university teachers must be filed within 18 months after a selection was made following the competitive recruitment and selection process.

II. After the Labor Certification is submitted to the Division of Employment Security the following steps are taken:

The application is transmitted by DES to the State Employment Service (SES). The SES refers the application to the local Regional Certifying Office of the Department of Labor (DOL). The DOL office in Boston handles all cases for labor certification in New England.

The DOL processes the applications in chronological order. Delays in response from one month to four months or longer are common and should be expected.

11/85

(Bear in mind that the DOL staff will not be familiar with many technical phrases and try to explain an applicant's shortcomings in layman's terms.)

c) the specific reasons why the foreign national is more qualified than the other applicants.

____2. The report of the search committee recommending the appointment of the foreign national. This is the report presented to the appropriate Academic Council member for approval and indicates that the approved search was followed with detail as to the candidates generated and considered, method of evaluation, and reasons for the preferred choice.

____3. A copy of at least one advertisement in a national professional journal, giving the name and the date of publication, stating the job title, duties and requirements.

____4. Evidence of all other recruitment efforts used.

____5. Documents attesting to the degree of the applicant's educational or professional qualifications, such as:

_____ curriculum vitae

_____ notarized copies of degree certificates

_____ list of publications

_____ several letters of recommendation

____6. A written statement signed by the Department Head attesting to the degree of the foreign national's educational or professional qualifications and academic achievements.

FORMS

____7. Application for Alien Employment Certification completed as follows:

_____ "Part A" Offer of Employment filled out by the Department Head. (Two (2) signed copies are needed).

_____ "Part B" Statement of Qualifications of the alien filled out by the foreign national. (Two (2) signed copies are needed).

Massachusetts Institute of Technology
International Visitors Office
Information Center
Room 7-121
77 Massachusetts Avenue
Cambridge
Massachusetts
02139

Labor Certification Checklist for Faculty Positions

Please send the following information to:

Virginia D. Lyons
Associate Director, Information Center
and Head, International Visitors Office
MIT, Room 7-121

I. Before the application is submitted by this office to the Division of Employment Security (DES) the following documentation should be assembled:

Documentation regarding the Search:

A separate handling category has been designated for college and university teachers. The documentation requirements are consistent with normal recruitment procedures and generally involve no additional efforts by the department.

The application should demonstrate that a competitive recruitment process resulted in the selection of a foreign national who is more qualified than the American applicants.

CHECK HERE AND ATTACH IN DUPLICATE

____1. A letter signed by the Department Head, outlining in detail the recruitment procedure. The following information must be included:

a) the total number of applicants,

b) the specific reasons why each of the other applicants was rejected. The evaluations should include the following:

- A synopsis of each applicant's resume indicating degrees, experience and previous employment (applicants should be identified as candidate #1, #2, etc., rather than by name. A sample evaluation is attached.).

- A detailed comparison of the applicant's qualifications to the position's requirements. If several "cuts" of applications were made indicate the reasons certain applicants did not survive the first and subsequent "cuts". DOL is particularly interested in the reasons interviewed applicants were rejected and expects more information for these than those that did not get past the initial screening.

place in line quite early in the whole process, and the time it takes to obtain labor certification is not usually a problem.

If an immigrant visa number is not immediately available at the time the application for adjustment is filed, the application would not be accepted. If the backlog for the particular country is very lengthy, the Immigration Service may not allow the individual to remain in the United States while waiting for a number to become available. In this case the individual would have to leave the United States and wait for an immigrant visa number to become available outside the United States and apply for the immigrant visa at an American Consulate or Embassy.

2. Two Year Foreign Residence Requirement

A foreign national who is, or has been, on an Exchange Visitor (J-1) visa and is subject to, but has not complied with, the requirement to return to his or her own country for a period of two years is not eligible for adjustment of status. If the foreign national was subject to the residence requirement but subsequently had the requirement waived by the Immigration and Naturalization Service, it is possible to apply for adjustment of status. If the foreign national is in the process of obtaining a waiver of the residence requirement but has not yet received formal approval, the adjustment application will usually not be accepted.

There are four ways to apply for a waiver of the residence requirement involving a number of steps. Those subject to the residence requirement should discuss with Ms. Lyons the likelihood of obtaining a waiver and the best way to apply to have it waived. Since this may be a time-consuming, sometimes difficult, process it is best to discuss it early.

3. Unauthorized Employment

If the foreign national has, on or after January 1, 1977, continued in or accepted unauthorized employment before filing the adjustment application, the adjustment application will be denied. Unauthorized employment is interpreted by the Immigration Service to include employment beyond the expiration of a valid non-immigrant visa as well as employment while waiting to change from one non-immigrant visa to another.

An individual who has engaged in unauthorized employment, although barred from adjustment of status in this country, may apply for an immigrant visa at an American Embassy or Consulate abroad. The Immigration Service will notify the Consulate when the petition is approved and the Consulate will send the individual packets of applications. Ultimately, he or she will be called to the Consulate for an interview and if the application is approved, will be given an immigrant visa.

All of the above documents regarding labor certifications, preference petitions, and adjustment of status applications should be sent to Ms. Virginia D. Lyons, Assistant Director of the International Visitors Office, Information Center, Room 7-121. She is responsible for submitting these applications for MIT to the Division of Employment Security/Department of Labor and the Immigration and Naturalization Service. Any questions regarding the procedures to be followed should be addressed to her.

VDL:vfs

b. Material Required for Filing Adjustment of Status or Consular Immigrant Visa Applications*

There are a number of forms that are completed when applying for an immigrant visa. The applicant who is applying for adjustment of status would be advised by Ms. Lyons regarding the necessary documents, most of which are completed by the individual rather than the MIT sponsoring department, laboratory or center. When applying abroad the Consul sends two packets of applications and instructions. One must show eligibility to immigrate (specifically that the reasons for not being eligible do not apply), birth and marriage (where applicable) certificates are required as are fingerprints, an employment letter, photographs, a medical exam, etc.

The format regarding the application procedure when applying for the visa through a U.S. Consulate will vary slightly from the process in the United States but basically the information needed is the same.

c. Processing Time

Adjustment of status through the Boston office of the Immigration and Naturalization Service generally takes between three to six months to be approved.

Consular visa applications would take a minimum of three months but may take considerably longer at the busiest U.S. consular posts. It is best to check with the Consulate to get a better estimate of the processing time.

d. Inelibibility for Adjustment of Status

There are many reasons why an individual may be considered ineligible to apply for adjustment of status. Three fairly common reasons are:

1. Availability of Immigrant Visa Numbers

As mentioned earlier, there is a quota on the number of immigrant visas available each year. Quota numbers are normally allocated according to one's country of birth rather than country of citizenship. Independent countries are limited to a maximum of 20,000 immigrant visas per year, dependent territories (such as Hong Kong) are limited to 600 visas per year. There is also a limit by preference category on the number of visas available.

For several years the demand for immigrant visas has been very high. As of March 1984, third preference visas were not immediately available for any country. Sixth preference visas were totally unavailable.

When some, but not all, visas are available the visa category is said to be "oversubscribed." Only applicants who have a "priority date" earlier than the date listed by the State Department will be able to apply for an immigrant visa. The priority date is created when the application for labor certification is filed so that the individual does establish a

*See also the checklist "Application to Immigrate" available from the International Visitors Office.

II. PREFERENCE PETITION*

a. Background

Immigration to the United States is based on a quota system with a specific number of visas available each year (270,000), allocated according to a preference system.

There are four preference categories for family members and two preference categories which we as the employer use to apply for a faculty or staff member to immigrate:

1. Third Preference - for members of the professions or persons of exceptional ability in the sciences or the arts who will substantially benefit prospectively the national economy, cultural interests, or welfare of the United States, and whose services are sought by an employer;

2. Sixth Preference - for persons performing skilled or unskilled labor.

In order to allocate a quota number, a preference petition must be approved by the Immigration and Naturalization Service. When the petition is filed it must be accompanied by an approved individual labor certification or by evidence that a request for blanket labor certification is being made.

The preference petition covers the foreign national and his or her immediate family. A departmental supporting letter, copies of the highest degree, curriculum vitae and publications list are attached.

b. Processing Time

The approval of a petition by the Immigration Service takes two to four months, sometimes longer.

III. ADJUSTMENT OF STATUS OR IMMIGRANT VISA APPLICATION

a. Background

An individual who is in the United States and is eligible to change visa status from a temporary visa to a permanent one, would file an application for adjustment of status.

Someone who is outside the United States or is ineligible to adjust status would apply at a U.S. Consulate abroad for the immigrant visa.

In order to be able to file an application for adjustment of status with the Immigration Service, labor certification must have been granted (or must have been requested in the case of a blanket labor certification determination), the preference petition must be either approved or attached, and there must be a visa number within the preference category immediately available. (See page 7 regarding the availability of immigrant visas--often a problem in these applications.)

*See also the checklist "Application to Immigrate" from the International Visitors Office.

Applications for faculty are sent to the Division of Employment Security which forwards the file to the state and federal offices of the Department of Labor for review. A final decision comes from the Regional Certifying Officer of the Department of Labor in Boston relatively quickly.

Applications for researchers can take one of two routes. If a search was done within the previous six months conforming to DOL standards and properly documented, it may be possible to obtain a waiver of additional search requirements. When this happens the processing time for labor certification is approximately one to three months. No further action is required on our part after filing the application.

If the search was done more than six months prior to filing the labor certification and/or it was not strictly done according to DOL requirements, it will be necessary to continue the search after filing the application. The Division of Employment Security will place the position on its Job Bank for thirty days and will attempt to find a suitable U.S. worker. Resumes may be referred to MIT for review. An advertisement or advertisements would be required in a local newspaper or professional journal. Responses to the ads and Job Bank would need to be evaluated in writing.

When the position has been removed from the Job Bank, the application is transmitted by the Division of Employment Security to the State Employment Service. The State Office refers the application to the local Regional Certifying Office of the Department of Labor.

The Department of Labor processes the applications in chronological order. Delays in response from one to four months or longer are common and should be expected.

f. Blanket Labor Certification Requirements*

A blanket certification can be granted by the Immigration and Naturalization Service to an individual who is of exceptional ability in the sciences or the arts and world-renowned in the field of specialization. Approval of these applications is difficult to obtain and eligibility is based on the strong documentation presented.

This should include evidence by recognized experts testifying to the current widespread acclaim and international recognition accorded the foreign national. In addition, several other forms of documentation must be presented including either receipt of internationally recognized prizes, membership in selective international professional associations, material published by or about the foreign national, evidence that the foreign national has judged others professional work or evidence of original scientific or scholarly research contributions or international artistic exhibitions.

The Immigration and Naturalization Service in Boston interprets the blanket labor certification option quite narrowly--reserving it for those who are considered at or close to the top in their field worldwide. Unless there is a very clear-cut case that the individual will be considered eligible for blanket labor certification we will apply for individual labor certification.

*See also the "Blanket Labor Certification Checklist" available from the International Visitors Office.

c. Criteria for Labor Certification for Research Positions*

It is not so simple to obtain labor certification for other types of employment, including research positions. The threshold for rejecting American applicants is lower--if there are minimally qualified Americans available it is not possible to get labor certification for a foreign national.

The Labor Department has extensive requirements regarding the procedures that must be followed. These include some practices which are not generally followed by universities but would have to be completed for a labor certification to be issued. Among the unusual requirements are the following:

1. Advertising--Nationally, locally and internally, stating all of the requirements of the position and including salary information.

2. Specific information about the reasons for the rejection of each applicant.

3. A search may be conducted before or after filing the application and sometimes both are necessary. At MIT the search is usually done before filing the application because it is required for affirmative action purposes. If this is the situation, it is wise to discuss the case with Ms. Lyons before starting the search since it can be arranged so that one search will ultimately satisfy both Institute and Labor Department requirements. The wording of the advertisement is a very important part of the labor certification and should be reviewed by Ms. Lyons before appearing in a publication.

4. It is essential that the foreign national chosen be able to satisfy all of the position's requirements. (Experience gained on the same job at MIT may not be included.)

d. Forms for Applying for Labor Certification

1. MA7-50A "Statement of Qualifications of Alien." This form is filled out by the foreign national for whom we are applying for labor certification. Two signed copies are submitted.

2. MA7-50B "Job Offer of Alien Employment." This form is signed by the department head, center or laboratory director. Constantine B. Simonides, Vice President of MIT, co-signs. Again, two signed copies are submitted.

e. Filing the Request for Labor Certification

The International Visitors Office files labor certification applications for MIT with the local office of the Division of Employment Security.

*See also "Labor Certification Procedures for Research Positions" available from the International Visitors Office.

Please Note:

MIT has a policy regarding supporting applications for immigrant visas. Those holding temporary positions would not be sponsored by MIT. Questions regarding Institute support should be discussed with Ms. Lyons.

I. LABOR CERTIFICATION

a. Background

The labor certification regulations were established to determine that by offering permanent employment to a non-U.S. citizen a job was not denied a U.S. worker who was able, willing, qualified, and available for the position, and that the wages and working conditions of U.S. workers similarly employed were not adversely affected. The regulations were amended for college and university teachers, scientists and artists of exceptional ability to require that U.S. workers must be equally (rather than minimally) qualified as the foreign citizen to be considered for the job. In order for labor certification to be granted, the employer must demonstrate that the foreign citizen was selected as a result of a competitive recruitment and selection process, and that through this process the foreign citizen was found to be minimally qualified (or better qualified in the case of teachers) in comparison to the U.S. workers who applied for the position. When a competitive search has already taken place, it is possible to apply for an exemption from some of the usual Department of Labor search requirements. If a competitive search has not taken place it will be necessary to begin one, following the affirmative action serious search procedure of the department, center, or laboratory. If, after completing the search, it is apparent that an American citizen or permanent resident cannot be found for the position, an application for labor certification will be submitted.

It is important to bear in mind the different criteria applied to the applications for college and university teachers and those for practically all other jobs, including research positions at MIT.

b. Criteria for Labor Certification for Faculty Positions*

The focus of the documentation for these applications is on the competitive recruitment and selection process through which the foreign national was chosen as superior to the other applicants. Documentation is presented regarding: the search and selection procedure, the reasons other applicants were rejected, the chosen applicant's credentials, advertisements and other evidence of recruitment, and Labor Department forms completed by the foreign national and the department.

If a department has complied with affirmative action requirements and did a fair search, it should be relatively simple to obtain labor certification It is essential to document the case well and to apply within the time limit placed by the Labor Department (eighteen months from the time the foreign national was selected). When this is done, labor certification usually takes several months to obtain.

*See also "Labor Certification Checklist for Faculty Positions" available from the International Visitors Office for more detail about this process.

variations of "individual labor certification". For MIT purposes you should know the "individual labor certification" requirements are different for faculty and research positions. The INS handles the third category, called "blanket labor certification".

The individual labor certification process involves a determination that a thorough search was conducted with the employer showing that qualified or equally qualified American applicants could not be found.

The blanket labor certification waives the search process if it can be shown that the foreign national has extraordinary abilities and is known and acclaimed worldwide as an expert in his or her field. (The INS takes a restrictive interpretation of this option--reserving it for those who are considered at or close to the top in their field.)

2. Preference Petition

There is an annual limit of 270,000 on the number of immigrants admitted to the United States. The visas are given out according to a six preference system: four preferences are for United States citizens or permanent residents to apply for their family members, the other two preference categories are for immigration based on employment. The category most often used by MIT is the one for members of the professions and persons of exceptional ability in the sciences or the arts called "third preference." "Sixth preference," the skilled and unskilled worker category, may also be used in some cases.

A petition for third preference status may be filed after the individual labor certification has been granted. When a blanket labor certification is requested, however, the preference petition is filed at the same time as the request for labor certification.

3. Application for Permanent Resident Visa

If the foreign national will apply for the immigrant visa while in the United States he or she files an application for adjustment of status. If the foreign national will apply abroad, he or she files an immigrant visa application at a United States Consulate.

Filing an application for adjustment of status from non-immigrant to immigrant requires several prior steps. An individual labor certification must have been granted, a visa number must be immediately available from the quota, and the individual may not have worked without INS permission before filing the application. An adjustment of status application is usually filed at the same time as the preference petition and is reviewed together by INS.

Enclosed is information regarding the documentation and forms which are filed to obtain an immigant visa. When a department, center or laboratory is contemplating applying for immigrant status for a foreign national employed at the Institute in a research staff or faculty capacity it is important to discuss the process and the particular circumstances involved as early as possible with Ms. Lyons. The several steps involved can be time consuming and it is essential to plan the sequence carefully for a smooth transition to an immigrant visa.

(2) Is the scholar paid by UC? (Any scholar placed on payroll must have satisfactory, verifiable health insurance or they cannot be paid.) If paid by UC 50% time for 1 year or more or 100% time for minimum 3 months, scholar is eligibile for UC employee coverage. Process as regular employee. If ineligible for UC coverage, see (4) below. _____

Date enrolled in insurance _____

(3) If the scholar is over 65 years and employed at least 1 hour by UC, s/he is eligible for UC health insurance. Process as regular employee. Date enrolled in insurance _____

(4) If not paid by UC, or if parttime employee ineligible for UC employee plans, refer to AFSS for health insurance enrollment. _____

(5) If employed by UC, must have Social Security number. Upon application for number, should ask SSA for receipt; present receipt to host department for photocopying. Attach photocopy to PAF for processing. _____

d) If position is permanent, scholar, department chair and administrative assistant make appointment with AFSS to discuss acquisition of permanent resident (immigrant) visa. _____

II. Scholar Visits AFSS -- call 642-2818 for appointment within 7 days of arrival in Berkeley. _____

Passport, visa and travel regulations reviewed; orientation to campus and community; cultural programs, work permits and programs for spouses and family. Health insurance and medical care; enrollment in insurance plan if needed.

III. Housing Service, 2401 Bowditch St. -- call 642-0667 for appointment.

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